

IN THE
COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 2021

NO. 29

LEE BOYD MALVO,

Appellant

v.

STATE OF MARYLAND,

Appellee

ON WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND

JOINT RECORD EXTRACT

PAUL B. DeWOLFE
Public Defender

Kiran Iyer
Assigned Public Defender
AIS # 1806190077
Counsel for Appellant
(P): 617-230-8264

Celia Anderson Davis
Assistant Public Defender
AIS # 9012180154
Counsel for Appellant
(P): 410-767-8527

Office of the Public Defender
Appellate Division
6 Saint Paul Street, Suite 1302
Baltimore, Maryland 21202-1608

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JOINT RECORD EXTRACT

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CIRCUIT COURT FOR MONTGOMERY COUNTY

CLERK'S OFFICE
50 MARYLAND AVENUE
ROCKVILLE, MARYLAND 20850



Barbara H. Meiklejohn
CLERK OF THE COURT

240-777-9420

November 8, 2017

Brian M. Saccenti, Esquire
Chief Attorney
Appellate Division
6 Saint Paul Street, Suite 1302
Baltimore, MD 21202

In re: Lee Boyd Malvo v. State of Maryland
Criminal Case No. 102675

Dear Mr. Saccenti:

Pursuant to Maryland Rule 8-413, I am sending you herewith a copy of the Docket Entries for the above entitled case, which was mailed to the Court of Special Appeals today.

I am also enclosing for your convenience, a copy of the Index.

Sincerely,

BARBARA H. MEIKLEJOHN

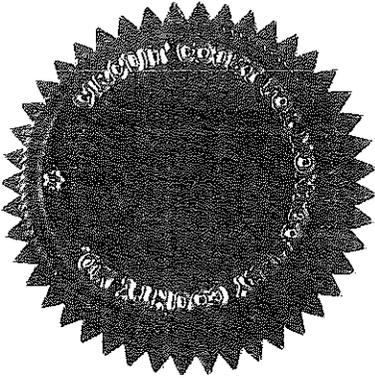
Barbara H. Meiklejohn
Clerk of the Circuit Court
for Montgomery County, Maryland

BHM/afg

cc: Antoinette Johnson, Attorney General's Office

STATE OF MARYLAND, MONTGOMERY COUNTY, TO WIT:

I HEREBY CERTIFY: that the foregoing are the original papers in the Record of Lee Boyd Malvo v. State of Maryland, being Criminal Case No. 102675 as identified in the attached Index and copy of Docket Entries.



IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the Seal of the Circuit Court for Montgomery County, Maryland this 8th day of November, 2017, A.D.

A handwritten signature in black ink, appearing to read "Barbara H. Meiklejohn", followed by a horizontal line and the initials "/a34".

BARBARA H. MEIKLEJOHN

Barbara H. Meiklejohn
Clerk of the Circuit Court for
Montgomery County, Maryland

Cost of Record
Montgomery County Fees:
Court of Special Appeals Fees:
Cost of Testimony: \$132.00

Trial Election: JURY Status: Closed as of: 08/30/2017

Arrest/Citation Date: 05/25/2005 Age: Plea Judge: J. RYAN
 Track: 4 4-271:Closed

Initial Appearance Date: 07/15/2005 DE 19

STATE OF MARYLAND

KATHERINE WINFREE 19882
 ASSISTANT STATE'S ATTORNEY
 50 MARYLAND AVE
 ROCKVILLE MD 20850
 PHONE 240-777-7392

-vs-

LEE BOYD MALVO

JAMES A JOHNSTON 33062
 MD OFFICE OF THE PUBLIC DEFEND
 POST-CONVICTION DEFENDERS DIVI
 217 E REDWOOD ST STE 1020
 BALTIMORE MD 21201
 PHONE 410-209-8615

BRIAN M SACCENTI 29995
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 SUITE 1302
 6 ST PAUL ST
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C H A R G E S

Description	Statute
#001 MURDER/FIRST DEGREE	CL
#002 MURDER/FIRST DEGREE	CL
#003 MURDER/FIRST DEGREE	CL
#004 MURDER/FIRST DEGREE	CL
#005 MURDER/FIRST DEGREE	CL
#006 MURDER/FIRST DEGREE	CL

VERDICT: GUILTY

Costs	Assessed	Received	Waived/Susp	Due
(none of record)				

DATE	SCHEDULED EVENT	PLDG	TIME	RM.	LENGTH
07/15/2005	CS 1079* SCHEDULING/PLANNING CONF		01:30		
09/02/2005	SH 0603 STATUS CONFERENCE		08:30		
09/02/2005	SH 0603 STATUS CONFERENCE		08:30		
09/23/2005	MOTION HEARING DATE*				
10/10/2006	PL 1081* PLEA		09:30	1	
11/08/2006	SE 1084* SENTENCING		01:00	1	
06/15/2017	MT 0573* CORRECT ILLEGAL SENTENCE	69	01:30	9A	

D O C K E T I N F O R M A T I O N

06/16/2005 #1 DISTRICT COURT CASE NUMBER 636 KB
TYPE: DOCKET
DISTRICT COURT CASE NO.0D00126259; TRACKING NO.021001762773.

06/16/2005 #2 INDICTMENT 571 KB
TYPE: DOCKET
INDICTMENT; TRUE BILL, FILED. (4-215 HEARING SET)

06/16/2005 #3 LINE ENTERING APPEARANCE OF COUNSEL 609 KB
TYPE: DOCKET
LINE ENTERING THE APPEARANCE OF KATHERINE WINFREE AS ATTORNEY FOR THE
STATE, FILED.

06/16/2005 #4 ORDER, CHARGING DOCUMENTS ADMIN. JOINED 1546 KB
TYPE: DOCKET
ADMINISTRATIVE ORDER OF COURT (HARRINGTON, J.) ADMINISTRATIVELY
JOINING CHARGING DOCUMENTS PURSUANT TO RULE 4-203 (b) .
Judge: A HARRINGTON

06/16/2005 #5 ORDER, SCHEDULING 738 KB
TYPE: DOCKET
SCHEDULING ORDER (HARRINGTON, J.), ENTERED. (COPIES MAILED)
Judge: A HARRINGTON

06/16/2005 #6 SUMMONS ISSUED 248 KB
TYPE: DOCKET
SUMMONS ISSUED RETURNABLE: JULY 8, 2005 AT 9:00 A.M.

06/17/2005 #7 SHERIFF'S RETURN ON SUMMONS: SERVED 752 AB
TYPE: DOCKET
SHERIFF'S RETURN ON SUMMONS-SUMMONED, FILED.

06/23/2005 #8 STATE'S CERTIFICATION OF COMPLIANCE 926 CH
TYPE: DOCKET
SIX (6) STATE'S CERTIFICATION OF COMPLIANCE OF VICTIM NOTIFICATION
FORM, FILED.

06/27/2005 #9 ORIGINAL RECORD RECEIVED FROM DISTRICT COU 489 AB
TYPE: DOCKET
ORIGINAL RECORD AND COPY OF DOCKET ENTRIES RECEIVED FROM DISTRICT
COURT IN MONTGOMERY COUNTY, FILED.

06/29/2005 #10 LINE ENTERING APPEARANCE OF COUNSEL 609 AB
TYPE: DOCKET
LINE ENTERING THE APPEARANCE OF WILLIAM C. BRENNAN, JR. AND HARRY J.
TRAINOR, JR. AS COUNSEL FOR DEFENDANT AND WAIVES ARRAIGNMENT, FILED.

06/29/2005 #11 DEFENDANT'S REQUEST FOR SPEEDY TRIAL 85 AB
TYPE: DOCKET
DEFENDANT'S DEMAND FOR SPEEDY TRIAL ON ALL COUNTS, AND WAIVES
ARRAIGNMENT PRESENTLY SCHEDULED FOR JULY 8, 2005, FILED.

D O C K E T I N F O R M A T I O N

CONT'D.

- 06/29/2005 #12 REQUEST, DISCOVERY AND INSPECTION 84 AB
TYPE: DOCKET
DEFENDANT'S MOTION FOR DISCOVERY AND INSPECTION, FILED.
- 07/05/2005 #13 CLERK ENTERS NOT GUILTY PLEA 89 RR
TYPE: DOCKET
CLERK ENTERS NOT GUILTY PLEA PURSUANT TO RULE 4-242(B) (4).
- 07/05/2005 #14 DISCOVERY 243 RR
TYPE: DOCKET
STATE'S LETTER OF DISCOVERY, FILED.
- 07/06/2005 #15 DISCOVERY 243 EJ
TYPE: DOCKET
STATE'S DISCOVERY LETTER, FILED.
- 07/11/2005 #16 (shielded)
- 07/15/2005 #17 HEARING, SCHEDULING/PLANNING HEARING 1079 RR
TYPE: DOCKET
SCHEDULING/PLANNING CONFERENCE HELD; MS. WINFREE, MR. MCCARTHY AND MR. CHOPRA, STATE'S ATTORNEYS.
Judge: J RYAN
TAPE# 16-050715 START# 13:43:07 STOP# 13:54:51 #SESSIONS 1
- 07/15/2005 #18 COURT SETS 684 RR
TYPE: DOCKET
COURT (RYAN, J.) SETS CASE FOR A STATUS CONFERENCE ON SEPTEMBER 2, 2005 AT 8:30 A.M.
Judge: J RYAN
- 07/15/2005 #19 DEFENDANT'S INITIAL APPEARANCE 765 RR
TYPE: DOCKET
MR. TRAINOR AND MR. BRENNAN, APPEARED ON BEHALF OF THE DEFENDANT WHO WAS NOT TRANSPORTED.
Judge: J RYAN
- 07/15/2005 #20 COURT ORDERS/DIRECTS/DETERMINES 536 RR
TYPE: DOCKET
COURT (RYAN, J.) ORDERS ALL OTHER DATES REMAIN THE SAME PENDING STATUS CONFERENCE.
Judge: J RYAN
- 08/09/2005 #21 (shielded)
- 08/11/2005 #22 (shielded)
- 08/29/2005 #23 DISCOVERY 243 MT
TYPE: DOCKET
STATE'S LETTER OF DISCOVERY, FILED.

D O C K E T I N F O R M A T I O N

CONT'D.

08/29/2005 #24 DISCOVERY 243 MT
TYPE: DOCKET
STATE'S LETTER OF DISCOVERY, FILED.

08/29/2005 #25 MOTION, ADVANCE/EXPEDITE 177 MT
TYPE: MOTION STATUS: MOOT
STATE'S CONSENT MOTION TO ADVANCE SCHEDULING/PLANNING CONFERENCE,
FILED.

09/02/2005 #26 HEARING, STATUS HEARING 603 JS
TYPE: DOCKET
STATUS CONFERENCE CALLED (HARRINGTON, J.) MS. WINFREE, MR. MCCARTHY
AND MR. CHOPRA, STATE'S ATTORNEYS.
Judge: A HARRINGTON
TAPE# 16-050902 START# 08:49:56 STOP# 08:52:14 #SESSIONS 1

09/02/2005 #27 DEFENDANT APPEARED 681 JS
TYPE: DOCKET
DEFENDANT APPEARED VIA VIDEO, WITH COUNSEL, MR. BRENNAN (HARRINGTON,
J.)
Judge: A HARRINGTON

09/02/2005 #28 HEARING 573 JS
TYPE: DOCKET
COURT (HARRINGTON, J.) ADVISES DEFENDANT OF HIS RIGHTS PURSUANT TO
STATUTORY RIGHTS UNDER THE INTERSTATE AGREEMENT ON DETAINERS, TO A
"SPEEDY TRIAL" AND TO BE TRIED WITHIN 180 DAYS.
Judge: A HARRINGTON
TAPE# 16-050902 START# 08:49:56 STOP# 08:52:14 #SESSIONS 1

09/02/2005 #29 COURT POSTPONES BEYOND 180 DAYS 1364 JS
TYPE: DOCKET
DEFENDANT CONSENTS TO A CONTINUANCE BEYOND 180 DAYS, WAIVES RIGHTS
UNDER INTERSTATE AGREEMENT ON DETAINERS AND "SPEEDY TRIAL".
Judge: A HARRINGTON

09/02/2005 #30 HEARING, STATUS HEARING 603 JS
TYPE: DOCKET
STATUS CONFERENCE HELD (RYAN, J.) MS. WINFREE, MR. MCCARTHY AND MR.
CHOPRA, STATE'S ATTORNEYS.
Judge: J RYAN
TAPE# 16-050902 START# 08:33:49 STOP# 08:35:05 #SESSIONS 2
TAPE# 16-050902 START# 08:52:41 STOP# 09:44:04 #SESSIONS 2

09/02/2005 #31 DEFENDANT APPEARED 681 JS
TYPE: DOCKET
DEFENDANT APPEARED VIA VIDEO, WITH COUNSEL, MR. BRENNAN.
Judge: J RYAN

09/02/2005 #32 MOTION, POSTPONEMENT 515 JS
TYPE: MOTION STATUS: GRANTED RULING: 40
JOINT ORAL MOTION MOTION FOR CONTINUANCE OF TRIAL DATE; (RYAN, J.)
Judge: J RYAN

D O C K E T I N F O R M A T I O N

CONT'D.

09/02/2005 #33 COURT ORDERS/DIRECTS/DETERMINES 536 JS
TYPE: DOCKET
COURT (RYAN, J.) DIRECTS THAT ALL MOTIONS BE FILED BY NOVEMBER 7,
2005.
Judge: J RYAN

09/02/2005 #34 COURT ORDERS/DIRECTS/DETERMINES 536 JS
TYPE: DOCKET
COURT (RYAN, J.) DIRECTS THAT ALL RESPONSES TO ANY MOTIONS BE FILED BY
NOVEMBER 28, 2005.
Judge: J RYAN

09/02/2005 #35 COURT ORDERS/DIRECTS/DETERMINES 536 JS
TYPE: DOCKET
COURT (RYAN, J.) DIRECTS THAT BOTH PARTIES TRIAL EXPERTS DESIGNATION
BE FILED BY NOVEMBER 28, 2005.
Judge: J RYAN

09/02/2005 #36 COURT SETS 684 JS
TYPE: DOCKET
COURT (RYAN, J.) SETS CASE FOR A STATUS CONFERENCE ON DECEMBER 5, 2005
AT 9:30 A.M.
Judge: J RYAN

09/02/2005 #37 COURT SETS 684 JS
TYPE: DOCKET
COURT (RYAN, J.) SETS CASE FOR A ONE (1) DAY MOTIONS HEARING ON
DECEMBER 23, 2005 AT 9:30 A.M.
Judge: J RYAN

09/02/2005 #38 JS
TYPE: DOCKET
COURT (RYAN, J.) RECOMMENDS CASE BE CONTINUED DUE TO CALENDER
CONFLICTS (PARTIES NEED TO GET AFFAIRS IN ORDER) (A) AND CONTINUING
CASE FOR A SEVEN (7) WEEK JURY TRIAL TO OCTOBER 10, 2006 AT 9:30 A.M.
BEFORE THIS MEMBER OF THE BENCH.
Judge: J RYAN

09/02/2005 #39 COURT ORDERS/DIRECTS/DETERMINES 536 JS
TYPE: DOCKET
COURT (RYAN, J.) DIRECTS CASE BE SENT TO JUDGE HARRINGTON FOR RULING
ON CONTINUANCE.
Judge: J RYAN

09/02/2005 #40 ORDER, POSTPONE 976 JS
TYPE: RULING STATUS: GRANTED MOTION: 32
ORDER OF COURT (HARRINGTON, J.) GRANTING JOINT ORAL MOTION FOR
CONTINUANCE OF TRIAL DATE AND CONTINUED TO OCTOBER 10, 2006 AT 9:30
A.M. FOR SEVEN (7) WEEKS, ENTERED. (COPIES MAILED)
Judge: A HARRINGTON

REASON: A-CALENDAR CONFLICTS
REQ BY: JOINT MULTI: NO EVENT(S): 5

D O C K E T I N F O R M A T I O N

CONT'D.

- 09/02/2005 #41 ORDER, SCHEDULING 738 JS
 TYPE: DOCKET
 SCHEDULING ORDER (RYAN, J.) SETTING: MOTIONS FILING DEADLINE FOR NOVEMBER 7, 2005, RESPONSES TO MOTIONS FILED BY NOVEMBER 28, 2005, STATUS HEARING FOR DECEMBER 5, 2005 AT 8:30 A.M., MOTIONS HEARING ON DECEMBER 23, 2005 AT 9:30 A.M FOR ONE (1) DAY AND TRIAL DATE FOR OCTOBER 10, 2005 AT 9:30 A.M. FOR SEVEN (7) WEEKS, ENTERED. (COPIES MAILED)
 Judge: J RYAN

- 09/12/2005 #42 LINE ENTERING APPEARANCE OF COUNSEL 609 JS
 TYPE: DOCKET
 LINE ENTERING THE APPEARANCE OF TIMOTHY J. SULLIVAN AS CO-COUNSEL FOR DEFENDANT, FILED.

- 09/19/2005 #43 DISCOVERY 243 JS
 TYPE: DOCKET
 STATE'S SUPPLEMENTAL LINE OF DISCOVERY, FILED.

- 10/12/2005 #44 DISCOVERY 243 MT
 TYPE: DOCKET
 STATE'S SUPPLEMENTAL LETTER OF DISCOVERY, FILED.

- 10/19/2005 #45 DISCOVERY 243 EJ
 TYPE: DOCKET
 STATE'S SUPPLEMENTAL LINE OF DISCOVERY, FILED.

- 11/07/2005 #46 MOTION, AMEND 1 JA
 TYPE: MOTION STATUS: GRANTED RULING: 47
 JOINT MOTION TO AMEND SCEHDULING ORDER, FILED.
 Judge: J RYAN

- 11/15/2005 #47 ORDER, AMEND 973 MT
 TYPE: RULING STATUS: GRANTED MOTION: 46
 ORDER OF COURT (RYAN, J.) ORDERS THAT THE SCHEDULING ORDER BE AMENDED TO REFLECT THE FOLLOWING DATES FOR THE DEFENDANT: MOTIONS FOR JULY 21, 2006, RESPONSES FOR AUGUST 11, 2006, TRIAL EXPERTS (NON-DEATH RELATED) FOR AUGUST 11, 2006, MOTIONS HEARING FOR AUGUST 24, 2006 AT 9:30 A.M., AND TRIAL FOR OCTOBER 10, 2006; IT IS FURTHER ORDERED THAT THE TRIAL DATES FOR THE TWO MATTERS REMAIN UNCHANGED, ENTERED. (COPIES MAILED)
 Judge: J RYAN

- 01/20/2006 #48 DISCOVERY 243 RR
 TYPE: DOCKET
 STATE'S SUPPLEMENTAL LETTER OF DISCOVERY, FILED.

- 06/02/2006 #49 (shielded)

- 06/13/2006 #50 COURT SETS 684 AB
 TYPE: DOCKET
 MEMORANDUM OF COURT (RYAN, J.) SETTING MOTIONS HEARING ON AUGUST 24, 2006 AT 9:30 A.M., FILED.
 Judge: J RYAN

D O C K E T I N F O R M A T I O N

CONT'D.

06/14/2006 #51 NOTICE, DISREGARD/REMOVE 778 AB
TYPE: DOCKET
NOTICE TO DISREGARD/REMOVE, 8/24/06 FILED AND MAILED.

06/22/2006 #52 PLEA AGREEMENT 482 RR
TYPE: DOCKET
PLEA AGREEMENT BEFORE JUDGE RYAN, FILED.
Judge: J RYAN

06/22/2006 #53 ORDER, CONSENT 758 RR
TYPE: DOCKET
CONSENT ORDER OF COURT (HARRINGTON J.) PLEA DATE TO REMAIN ON OCTOBER
10, 2006 AT 9:30 A.M., ENTERED. (COPIES MAILED)
Judge: A HARRINGTON

10/10/2006 #54 DEFENDANT'S ORAL PLEA 766 KJ
TYPE: DOCKET
DEFENDANT PLACED UNDER OATH AND WITHDRAWS NOT GUILTY PLEA AND ENTERS A
PLEA OF GUILTY TO COUNTS #1, 2, 3, 4, 5 AND 6 OF THE INDICTMENT. COURT
(RYAN, J.) ADVISES DEFENDANT OF HIS RIGHTS, FINDS DEFENDANT HAS FREELY
AND VOLUNTARILY WAIVED HIS RIGHT TO A JURY TRIAL, ENTERS PLEA, ACCEPTS
PLEA AND ENTERS A FINDING OF GUILTY TO COUNT #1 (MURDER-FIRST DEGREE)
COUNT #2 (MURDER-FIRST DEGREE), COUNT #3 (MURDER-FIRST DEGREE), COUNT
#4 (MURDER-FIRST DEGREE), COUNT #5 (MURDER-FIRST DEGREE), AND COUNT
#6 (MURDER-FIRST DEGREE). MRS. WINFREE, STATE'S ATTORNEY, DEFENDANT
APPEARED WITH COUNSEL, MR. SULLIVAN AND MR. BRENNAN.
Judge: J RYAN
TAPE# 1-061010 START# 10:00:00 STOP# 10:28:00 #SESSIONS 1

10/10/2006 #55 COURT SETS 684 KJ
TYPE: DOCKET
COURT (RYAN, J.) ORDERS DEFENDANT TO BE HELD WITHOUT BOND PENDING
SENTENCING NOVEMBER 9, 2006 AT 1:00 PM.
Judge: J RYAN

10/10/2006 #56 ORDER, PRE-SENTENCE INVESTIGATION 732 KJ
TYPE: DOCKET
ORDER OF COURT (RYAN, J.) FOR PRE-SENTENCE INVESTIGATION, ENTERED.
(NOT DONE ON RECORD)
Judge: J RYAN

11/02/2006 #57 P.S.I. RECEIVED 259 AB
TYPE: DOCKET
PRE-SENTENCE INVESTIGATION RECEIVED ON NOVEMBER 2, 2006 AND HAND
DELIVERED TO JUDGE RYAN. COPIES PROVIDED TO STATE'S ATTORNEY AND
DEFENDANT'S COUNSEL HARRY J. TRAINOR, JR., FILED. (LP)
Judge: J RYAN

11/03/2006 #58 COURT POSTPONES HEARING/TRIAL TO 555 AB
TYPE: DOCKET
MEMORANDUM OF COURT (RYAN, J.) RESETTING SENTENCING HEARING TO
NOVEMBER 8, 2006 AT 1:00 P.M., FILED. (LP)
Judge: J RYAN

D O C K E T I N F O R M A T I O N

CONT'D.

- 11/08/2006 #59 DISPOSITION 262 J3
TYPE: DOCKET
DEFENDANT WAS ASKED IF HE HAD ANYTHING TO SAY BEFORE SENTENCING. COURT (RYAN, J.) SENTENCES DEFENDANT AS TO COUNT #1 TO THE MARYLAND DEPARTMENT OF CORRECTIONS FOR A PERIOD OF LIFE WITHOUT PAROLE. AS TO COUNT #2 FOR A PERIOD OF LIFE WITHOUT PAROLE CONSECUTIVE TO COUNT #1. AS TO COUNT #3 FOR A PERIOD OF LIFE WITHOUT PAROLE CONSECUTIVE TO COUNT #1 & 2. AS TO COUNT #4 FOR A PERIOD OF LIFE WITHOUT PAROLE CONSECUTIVE TO COUNT #1,2 & 3. AS TO COUNT #5 FOR A PERIOD OF LIFE WITHOUT PAROLE CONSECUTIVE TO COUNT #1,2,3 & 4. AS TO COUNT #6 FOR A PERIOD OF LIFE WITHOUT PAROLE CONSECUTIVE TO COUNT #1,2,3,4 & 5. SENTENCE TO RUN CONSECUTIVE TO ANY OTHER SENTENCE. COURT IMPOSES NO PROBATION. COURT COSTS WAIVED. MS. WINFREE AND MR. CHOPRA, STATE'S ATTORNEYS.
Judge: J RYAN
TAPE# 1-061108 START# 13:02:15 STOP# 13:26:30 #SESSIONS 1
- 11/08/2006 #60 DEFENDANT APPEARED 681 J3
TYPE: DOCKET
DEFENDANT APPEARED WITH COUNSEL, MR. BRENNAN AND MR. SULLIVAN.
Judge: J RYAN
- 11/08/2006 #61 DEFENDANT ADVISED OF RIGHTS (RULE 4-342) 677 J3
TYPE: DOCKET
DEFENDANT ADVISED OF RIGHTS PURSUANT TO RULE 4-342 AND RIGHTS FORM, FILED.
Judge: J RYAN
- 11/08/2006 #62 P.S.I. SEALED PER ORDER OF COURT 553 J3
TYPE: DOCKET
PRE-SENTENCE INVESTIGATION AND SENTENCING DOCUMENTS SEALED PER ORDER OF COURT (RYAN, J.) AND FILED.
Judge: J RYAN
- 11/08/2006 #63 MARYLAND SENTENCING GUIDELINES 669 J3
TYPE: DOCKET
MARYLAND SENTENCING GUIDELINES, FILED.
Judge: J RYAN
- 11/09/2006 #64 CLERK'S CORRECTION 493 J3
TYPE: DOCKET
CLERK'S CORRECTION: DOCKET ENTRY (#54) SHOULD READ AS FOLLOWS:
10/10/06 DEFENDANT PLACED UNDER OATH AND WITHDRAWS NOT GUILTY TO COUNTS #1,2,3,4,5 AND 6 OF THE INDICTMENT. COURT (RYAN, J.) ADVISES DEFENDANT OF HIS RIGHTS, FINDS DEFENDANT HAS FREELY AND VOLUNTARILY WAIVED HIS RIGHT TO A JURY TRIAL, ENTERS PLEA, ACCEPTS PLEA AND ENTERS A FINDING OF GUILTY TO COUNT #1 (MURDER-FIRST DEGREE), COUNT #2 (MURDER-FIRST DEGREE), COUNT #3 (MURDER-FIRST DEGREE), COUNT #4 (MURDER-FIRST DEGREE), COUNT #5 (MURDER-FIRST DEGREE), AND COUNT #6 (MURDER-FIRST DEGREE). MRS. WINFREE, STATE'S ATTORNEY. DEFENDANT APPEARED WITH COUNSEL, MR. SULLIVAN AND MR. BRENNAN. TAPE:
10/10/06-1-10:00:00-10:28:00
Judge: J RYAN

D O C K E T I N F O R M A T I O N

CONT'D.

11/09/2006 #65 COMMITMENT DELIVERED TO SHERIFF 665 J3
TYPE: DOCKET
COMMITMENT DELIVERED TO SHERIFF.
Judge: J RYAN

11/27/2006 #66 MOTION, MODIFICATION OF SENTENCE (CRM) 17 RR
TYPE: MOTION STATUS: DENIED RULING: 68
DEFENDANT'S MOTION FOR MODIFICATION OR REDUCTION OF SENTENCE, FILED.
Judge: R GREENBERG

12/20/2006 #67 HELD IN ABEYANCE 1049 J3
TYPE: DOCKET
ORDER OF COURT (HARRINGTON, J.) FOR JUDGE RYAN THAT THE DEFENDANT'S
MOTION FOR MODIFICATION OR REDUCTION OF SENTENCE BE HELD IN ABEYANCE
UNTIL FURTHER ORDER OF COURT, ENTERED. (COPIES MAILED)
Judge: A HARRINGTON

09/18/2012 #68 ORDER, MODIFICATION PETITION 323 KJ
TYPE: RULING STATUS: DENIED MOTION: 66
ORDER OF COURT (GREENBERG, J.) DENYING DEFENDANT'S MOTION FOR
MODIFICATION OF SENTENCE, ENTERED. (COPIES MAILED)
Judge: R GREENBERG

01/12/2017 #69 MOTION, APPROPRIATE RELIEF 930 D6
TYPE: MOTION STATUS: DENIED OPPOSITION: 77 RULING: 88
DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE AND REQUEST FOR
HEARING, FILED.
Judge: R GREENBERG Hearing: 06/15/2017 01:30

02/15/2017 #71 MOTION, EXTENSION OF TIME 60 D6
TYPE: MOTION STATUS: GRANTED RULING: 74
STATE'S MOTION FOR EXTENSION OF TIME TO FILE RESPONSE TO DEFENDANT'S
MOTION TO CORRECT ILLEGAL SENTENCE, FILED.
Judge: R GREENBERG

02/16/2017 #72 MEMORANDUM 727 D6
TYPE: DOCKET
MEMORANDUM OF COURT (GREENBERG, J.) SCHEDULING MOTION TO CORRECT
ILLEGAL SENTENCE FOR JUNE 15, 2017 AT 1:30 P.M., FILED.
Judge: R GREENBERG

02/17/2017 #70 SAO NOTIFIED VICTIM(S) OF UPCOMING HEARING 1810 NS
TYPE: DOCKET
STATE'S ATTORNEY NOTIFIED 4 VICTIMS OF THE FOLLOWING EVENT (S): EVENT
#0001 CORRECT ILLEGAL SENTENCE 06/15/2017 at 01:30 pm. REFER TO THE
STATE'S ATTORNEY'S OFFICE

02/23/2017 #73 NOTICE, HEARING DATE (MAILED) 437 D6
TYPE: DOCKET
NOTICE OF HEARING DATE FILED AND MAILED. (HEARING DATE: 06/15/2017 AT
1:30 P.M.)

D O C K E T I N F O R M A T I O N

CONT'D.

03/03/2017 #74 ORDER, EXTENSION OF TIME 907 S6

TYPE: RULING STATUS: GRANTED MOTION: 71

ORDER OF COURT (GREENBERG, J.) GRANTING DEFENDANT'S MOTION FOR
EXTENSION OF TIME TO FILE RESPONSE TO MOTION TO CORRECT ILLEGAL
SENTENCE, ENTERD. (COPIES MAILED)

Judge: R GREENBERG

03/10/2017 #75 MOTION, EXTENSION OF TIME 60 P2

TYPE: MOTION STATUS: GRANTED RULING: 76

STATE'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE RESPONSE TO
DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE, FILED.

Judge: R GREENBERG

03/20/2017 #76 ORDER, EXTENSION OF TIME 907 FG

TYPE: RULING STATUS: GRANTED MOTION: 75

ORDER OF COURT (GREENBERG, J.) GRANTING STATE'S UNOPPOSED MOTION FOR
EXTENSION OF TIME TO FILE RESPONSE TO DEFENDANT'S MOTION TO CORRECT
ILLEGAL SENTENCE, ENTERED. (COPIES MAILED)

Judge: R GREENBERG

03/22/2017 #77 OPPOSITION TO MOTION 900 MH

TYPE: OPPOSITION MOTION: 69 RULING: 88

STATE'S RESPONSE TO DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE,
FILED.

Judge: R GREENBERG

Hearing: 06/15/2017 01:30

05/09/2017 #78 (shielded)

05/09/2017 #79 (shielded)

06/14/2017 See Docket Entry #83

06/14/2017 See Docket Entry #84

06/14/2017 See Docket Entry #85

06/15/2017 #80 HEARING H4 573 BN

TYPE: DOCKET

HEARING (GREENBERG, J.) ON DEFENDANT'S MOTION TO CORRECT ILLEGAL
SENTENCE AND REQUEST FOR HEARING (#69). STATE'S ATTORNEY, MR.
KLEINBOARD. VICTIM (RIVERA) COUNSEL, MR. BUTLER.

Judge: R GREENBERG

TAPE# 9A-170615 START# 13:37:11 STOP# 14:41:10 #SESSIONS 1

06/15/2017 #81 DEFENDANT NOT PRESENT OR NOT TRANSPORTED 1768 BN

TYPE: DOCKET

MR. JOHNSTON APPEARED ON BEHALF OF THE DEFENDANT WHO WAS NOT
TRANSPORTED.

Judge: R GREENBERG

D O C K E T I N F O R M A T I O N

CONT'D.

06/15/2017 #82 COURT TAKES MATTER UNDER ADVISEMENT 91 BN
TYPE: DOCKET
COURT (GREENBERG, J.) TAKES MATTER UNDER ADVISEMENT.
Judge: R GREENBERG

06/15/2017 #83 (shielded)

06/15/2017 #84 LINE ENTERING APPEARANCE OF COUNSEL 609 CO
TYPE: DOCKET
LINE ENTERING THE APPEARANCE OF RUSSELL P. BUTLER AS COUNSEL FOR
VICTIM, FILED. (LP)
(Actual Filed Date: 06/14/2017)

06/15/2017 #85 MOTION, APPROPRIATE RELIEF 930 CO
TYPE: MOTION STATUS: MOOT
VICTIM REPRESENTATIVE'S ASSERTION OF RIGHT TO BE HEARD ON DEFENDANT'S
MOTION TO CORRECT AN ILLEGAL SENTENCE, FILED. (LP)
(Actual Filed Date: 06/14/2017)

06/21/2017 #86 LINE 488 CO
TYPE: DOCKET
VICTIM REPRESENTATIVE'S POST HEARING SUPPLEMENTAL ARGUMENT, FILED.
(LP)

07/12/2017 #87 LINE 488 CL
TYPE: DOCKET
DEFENDANT'S LINE TO PROVIDE ADDITIONAL CASE LAW, FILED. (LP)

08/16/2017 #88 ORDER, FOR APPROPRIATE RELIEF 977 D6
TYPE: RULING STATUS: DENIED MOTION: 69 OPPOSITION: 77
ORDER OF COURT (GREENBERG, J.) DENYING DEFENDANT'S MOTION TO CORRECT
ILLEGAL SENTENCE, ENTERED. (COPIES MAILED)
Judge: R GREENBERG

08/30/2017 #89 MOTION DEEMED MOOT PER... 1585 CL
TYPE: DOCKET
ORDER OF COURT (GREENBERG, J.) THAT THE MOTION AT TAB #85 HAS BEEN
DEEMED MOOT AS VICTIM PARTICIPATED IN HEARING THROUGH COUNSEL,
ENTERED. (COPIES MAILED)
Judge: R GREENBERG

09/14/2017 #90 NOTICE OF APPEAL-COURT SPECIAL APPEALS 823 G1
TYPE: DOCKET
DEFENDANT'S NOTICE OF APPEAL, FILED. (LP)

09/15/2017 #91 COPY OF DOCKET ENTRIES MAILED: PUB DEF OFC 358 G1
TYPE: DOCKET
COPY OF DOCKET ENTRIES MAILED TO THE OFFICE OF THE PUBLIC DEFENDER,
CHIEF, APPELLATE DIVISION. (LP)

Criminal CIRCUIT CT # 102675 DIST CT #0D00126259 AS OF 2017-11-08 08:45 CONT'D

Tracking #02-1001-76277-3

STATE OF MARYLAND VS. LEE BOYD MALVO

D O C K E T I N F O R M A T I O N

CONT'D.

10/12/2017 #92 LINE ENTERING APPEARANCE OF PUBLIC DEFENDE 843 G1

TYPE: DOCKET

PUBLIC DEFENDERS LINE ENTERING THE APPEARANCE OF BRIAN M. SACCENTI AS
COUNSEL FOR THE DEFENDANT FOR THE PURPOSE OF THE APPEAL ONLY, FILED.

11/08/2017 #93 TRANSCRIPT OF PROCEEDINGS

399 G1

TYPE: DOCKET

TRANSCRIPT OF PROCEEDINGS ON HEARING ON JUNE 15, 2017, FILED.

Rule 4-271 Date: Closed

*** END OF INFORMATION FOR CASE #102675C ***

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LEE BOYD MALVO

VS

:

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Judicial Disposition Form

District F29

- Incarceration 1 year or more
- Incarceration 12 months or less
- Probation
- Other

Name: Malvo, Lee Boyd VSP Number: _____

Court: FAIRFAX COUNTY FIPS Code: 059 Judicial Code: 19

Date of Sentencing: March 10, 2004 VACCIS Number: 318990

Sentence Narrative

CR03-3089 - Capital Murder (MUR-0911-F1)(18.2-31(13)) LIFE

CR03-3090 - Capital Murder (MUR-0961-F1)(18.2-31(8)) LIFE

CR03-3091 - Using a Firearm in the Commission of a Felony (ASL-1319-F9)(18.2-53.1) 3 years

Is this Offender a U.S. citizen? No

Was this Offender reported to the Immigration and Naturalization Service? Unknown

Case Disposition (Check All that Apply):

- | | |
|--|--|
| <input type="checkbox"/> Indefinite Probation | <input type="checkbox"/> Deferred Sentence; Taken under Advisement |
| <input type="checkbox"/> CCD Program | <input type="checkbox"/> First Offender Status |
| <input type="checkbox"/> Work Release | <input type="checkbox"/> Execution of Suspended Sentence |
| <input type="checkbox"/> Mental Health Treatment (In-Patient) | <input type="checkbox"/> Electronic Incarceration |
| <input type="checkbox"/> Mental Health Treatment (Out-Patient) | <input type="checkbox"/> Intensive Supervision |
| <input type="checkbox"/> Drug Treatment (In-Patient) | <input type="checkbox"/> Boot Camp |
| <input type="checkbox"/> Drug Treatment (Out-Patient) | <input type="checkbox"/> Day Reporting Center |
| <input type="checkbox"/> Alcohol Treatment (In-Patient) | <input type="checkbox"/> Detention Center Incarceration |
| <input type="checkbox"/> Alcohol Treatment (Out-Patient) | <input type="checkbox"/> Diversion Center Incarceration |
| <input type="checkbox"/> Post Release Supervision | <input type="checkbox"/> Drug Court |
| <input type="checkbox"/> Fine: | <input type="checkbox"/> Resentence on Imposition of Suspended Sentence; No Violation |
| <input type="checkbox"/> Restitution: | <input type="checkbox"/> Resentencing on Execution of Suspended Sentence; No Violation |
| <input type="checkbox"/> Court Costs: | <input type="checkbox"/> Imposition of Sentence Suspended |
| <input type="checkbox"/> Community Service: | <input type="checkbox"/> Warning/Reprimand |

March 10, 2004

Date

Probation & Parole Officer
Barbara A. Novak

Presentence Investigation Report Offender Information

District Number P29
Date of Sentencing March 10, 2004

Prepared By Barbara A. Novak
Date Prepared March 01, 2004

OFFENDER SUMMARY		Offender's Name (Last, First, Middle) Malvo, Lee Boyd			
Nickname/Street Name		Alias (AKA) John Lee Malvo		Maiden Name	
Race Black (not Hisp.)	Sex Male	Place of Birth (City or County) LOC / State Jamaica 888 JM		Age 19	Date of Birth 02/18/1985
Social Security Number		State ID Number (CCRE)		FBI Number 596094VB9	
Permanent Address N/A					
Local Address (if different) Chesapeake Regional Jail, Chesapeake, VA					
COURT INFORMATION		Court FAIRFAX COUNTY		Judge Honorable Jane Marum Roush	
Prosecuting Attorney Horan, Robert F. Jr.		Defense Attorney Arif, M., Cooley, C.		Type of Counsel <input checked="" type="checkbox"/> Court Appointed <input type="checkbox"/> Retained	
Date of Conviction 12/23/2003		Method of Adjudication <input type="checkbox"/> Guilty Plea <input type="checkbox"/> Judge <input checked="" type="checkbox"/> Jury			
Pretrial Status <input type="checkbox"/> On Bond <input type="checkbox"/> Own Recognizance <input checked="" type="checkbox"/> Confinement <input type="checkbox"/> Third Party Release <input type="checkbox"/> Confined on Other Charge			Source of Bond <input type="checkbox"/> Personal <input type="checkbox"/> Family <input type="checkbox"/> Other <input type="checkbox"/> Bondsman <input checked="" type="checkbox"/> N/A		Post Trial Status <input type="checkbox"/> Not Confined <input checked="" type="checkbox"/> Confined
Pretrial Jail Status					
From: 11/08/2002		To: 09/30/2003			
From: 10/02/2003		To: 10/19/2003			
From: 10/23/2003		To: 12/23/2003			
OFFENSE INFORMATION					
Docket Number		Offense at Indictment		Offense Code (VCC)	Plea Per Offense
1. CR03-3089		Killing in the commission of terroristic act		MUR0911F1	Not Guilty
2. CR03-3090		More than one person in a 3 year period		MUR0961F1	Not Guilty
3. CR03-3091		Firearm use in commission of felony-(first offense)		ASL1319F9	Not Guilty
Offense at Conviction		Offense Code (VCC)	Plea Agreement	Virginia Code Section	
1. Killing in the commission of terroristic act		MUR0911F1	None	18.2-31(13)	
2. More than one person in a 3 year period		MUR0961F1	None	18.2-31(8)	
3. Firearm use in commission of felony-(first offense)		ASL1319F9	None	18.2-53.1	

(Continued... See Addendum)

CODEFENDANTS

Names (Last, First, Middle)	Disposition
1. Mohammad, John	To be sentenced March 10, 2007

Continuation Sheet

REF: Malvo, Lee

ALIAS NAMES			
	Names (Last, First, Middle)	SSN	Date of Birth
1.	Malvo, John Lee		
2.	Muhammed, Lee		

Current Offense Information

REF: Malvo, Lee

MOST SERIOUS OFFENSE INFORMATION		Most Serious Offense at Indictment Killing in the commission of terroristic act		Offense Code (VCC) MUR0911F1	
Offense Date 10/14/2002	No. of Co-Defendants 1	Resisting Arrest Charge No	Type of Offense <input checked="" type="checkbox"/> Person <input type="checkbox"/> Property <input type="checkbox"/> Other		
Legal Status at the Time of Offense (Check all that apply)					
<input type="checkbox"/> Escaped <input type="checkbox"/> Inmate <input type="checkbox"/> Mandatory Parole <input type="checkbox"/> Discretionary Parole <input type="checkbox"/> Probation <input type="checkbox"/> On Bond <input type="checkbox"/> Summons <input type="checkbox"/> Released on Recognizance <input type="checkbox"/> Post-Release <input type="checkbox"/> Community Program <input type="checkbox"/> Good Behavior <input type="checkbox"/> Unsupervised Probation <input type="checkbox"/> Juvenile Probation <input type="checkbox"/> Missing/Unknown <input type="checkbox"/> Other <input checked="" type="checkbox"/> None					
Weapon Use <input type="checkbox"/> None <input checked="" type="checkbox"/> Used To Injure <input type="checkbox"/> Used To Threaten <input type="checkbox"/> Possession		Weapon Type <input checked="" type="checkbox"/> Firearm <input type="checkbox"/> Knife <input type="checkbox"/> Explosive <input type="checkbox"/> Simulated Weapon <input type="checkbox"/> Other <input type="checkbox"/> N/A			
Offender's Role in Offense <input type="checkbox"/> Alone <input type="checkbox"/> Leader <input type="checkbox"/> Accomplice <input checked="" type="checkbox"/> Not Determined					Current Arrest Date 10/14/2002-11/7/02
MOST SERIOUS OFFENSE VICTIM INFORMATION (CRIME AGAINST PERSON)		Injury to Victim <input checked="" type="checkbox"/> Death <input type="checkbox"/> Serious Physical <input type="checkbox"/> Physical <input type="checkbox"/> Emotional <input type="checkbox"/> Threatened <input type="checkbox"/> N/A			
Victim Relationship to Offender <input checked="" type="checkbox"/> None <input type="checkbox"/> Friend <input type="checkbox"/> Family <input type="checkbox"/> Police Officer		Physically Handicapped Victim No	Victim Information Sex F Race White (not Hisp.) Age		
Victim Impact Statement Requested If Yes, Attach to Last Page of PSI Yes		Alcohol/Drug Use At Time of Offense <input checked="" type="checkbox"/> None <input type="checkbox"/> Both <input type="checkbox"/> Alcohol <input type="checkbox"/> Drug <input type="checkbox"/> Unknown			
Drug Offense Primary Drug Amount		Secondary Drug Amount			

Narrative of Current Offense

Official Version: A Statement of Facts has yet to be provided by the Commonwealth's Attorney.

Defendant's Version: The defendant declined to submit a version.

Victim's Statement: Please see attached Statements.

Jail Adjustment Summary: The subject's adjustment to incarceration has yet to be reported to this Officer.

Juvenile Criminal History

REF: Malvo, Lee

JUVENILE RECORD	Prior Juvenile Record	Type of Record	Age at First Juvenile Delinquent Adjudication
	No	<input type="checkbox"/> Delinquent <input type="checkbox"/> Status <input type="checkbox"/> Both	
Number Prior Juvenile Delinquent Adjudications			
Crimes Against Person	0	Crimes Against Property	0
		Drug Crimes	0
		Other	0
Type of Disposition(s)			
<input type="checkbox"/> Probation <input type="checkbox"/> Revoked <input type="checkbox"/> State Ward <input type="checkbox"/> Other			
Verified Information		Source of Information if Unverified	
No		<input type="checkbox"/> Family Member <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> Other	

Narrative of Juvenile Criminal History

The subject claims to not have a juvenile record. Because he did not grow up in Fairfax County, this could not be verified. The subject did report that he was incarcerated in a Juvenile Detention Center in Washington State in January 2003 due to the fact that his mother alleged that he was kidnapped by Mr. Mohammad. The subject indicates he was detained due to his status as an illegal alien.

Adult Criminal History Summary

REF: Malvo, Lee

ADULT RECORD	Prior Adult Record No	No. of Prior Felony Sentence Events 0	No. Prior Felony Convictions For:				
			Crimes Against Person	Property Crimes	Drug Crimes	Other	
			0	0	0	0	
No. of Prior Felony Convictions For Instant Offense at Conviction 0			No. of Previous Felon Commitments				
			Virginia	0	Out-of-State	0	
Most Recent and Serious Prior Criminal Adult Convictions							
			<u>Description</u>		<u>Offense Code (VCC)</u>		
1.				1.			
2.				2.			
3.				3.			
4.				4.			
5.				5.			
No. of Prior Probations		No. of Prior Paroles		No. of Prior Incarcerations Received			
Completed	0	Revoked	0	Completed	0	Revoked	0
				Under One Year	0	One Year or More	0
Last Previous Arrest Date (Or Release From Confinement) N/A			No. Prior Misdemeanant Convictions				
			Criminal	0	Criminal Traffic	0	

Narrative of Adult Criminal History Summary

The Instant Offenses represent the subject's first felony convictions. According to the NCIC Report, warrants have been issued by Spotsylvania County, Virginia for Malicious Wounding and Attempted Capital Murder; by Baton Rouge, Louisiana for First Degree Murder and Armed Robbery and by Prince George's County, Maryland for First Degree Murder.

Family/Environmental Information

REF: Malvo, Lee

MARITAL/ RESIDENTIAL STABILITY	Number of Dependents 0	Marital Status <input checked="" type="checkbox"/> Single/Never Married <input type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced/Remarried <input type="checkbox"/> Widowed/Remarried <input type="checkbox"/> Other	
	Living Status <input type="checkbox"/> Alone <input type="checkbox"/> Single Parent/Head of House <input type="checkbox"/> With Spouse <input type="checkbox"/> With Parents/Other Relative <input checked="" type="checkbox"/> Other		
Length of Residence at Current Address Years 0 Months 0	Length of Residence in Local Area Years 0 Months 0	Length of Residence Apart from Parents Years 0 Months 0	Has Any Member of Offender's Family Ever Been Convicted of a Felony? No
Spouse Name/Address			

Narrative of Family/Environmental Information

Father: Leslie Boyd Malvo is in his 60's and resides in Jamaica. He is employed as a mason, reported to be in good health and has no known history of substance abuse or criminal activity.

Mother: Una James resides in Jamaica. She is employed as a seamstress, reported to be in good health and has no known history of substance abuse.

Half-brother: Rohan Malvo is 26 and resides in Jamaica. He is employed in sales, reported to be in good health and has no known history of substance abuse.

Half-sister: Tracy Malvo is 23 and resides in Jamaica. She is employed as a banker, reported to be in good health and has no known history of substance abuse or criminal activity.

Half-sister: Kelly Malvo is nine years old and resides in the Cayman Islands. She is reported to be in good health.

The subject was born in Kingston, Jamaica. His parents were not married at the time of his birth. He lived with both parents until he was five years old. He described his early childhood as normal with his mother being the disciplinarian. At the age of five, his parents separated and the subject stayed with his mother. The subject reported that his mother left his father and did not notify him of their whereabouts. The subject and his mother lived in Endeavor, Jamaica for about one year. During that year, the subject did not see his father, although the subject reported that his father searched for him. He indicated that his mother was "hiding" from his father because she just did not want to see him. After a year of "hiding," the subject and his mother returned to Kingston, Jamaica. It was then that the subject would visit with his father during the weekends and holidays.

The subject lived with his mother until he was eight years old. At that time, his mother migrated to the island of St. Marten in search of work. She left the subject in the care of Veronica and Barry Richards. He stayed with the Richards for approximately one year. He described his living arrangement as "not good." Mrs. Richards would work during the day and Mr. Richards stayed home. Mr. Richards would request that the subject do chores such as wash the dishes, herd cattle and water the garden. The subject would tell

(Continued... See Addendum)

Continuation Sheet

REF: Malvo, Lee**Narrative of Family/Environmental Information - Continued**

Mr. Richards "no" and Mr. Richards would "whoop my butt." Various disciplinary actions included being punched, pinched and hit with the belt. The subject stated that in Jamaica, children were seen and not heard. Reportedly, any adult, if they knew your family, was able to punish a child. He wrote to his mother at least three times a week complaining of his situation.

After staying with the Richards, the subject spent his summer vacation with his mother on the Island of St. Marten. He returned to Jamaica and asked his father if he could live with him, but his father told him no. His father worked for six months in the Cayman Islands and was home for six months, and thus, not able to care for the subject. The subject subsequently moved in with his Aunt Marie Lawrence in Endeavor, Jamaica. The subject stayed with his Aunt for about a year and a half. He described living with her as "okay." He was sometimes provided the basic essentials. Reportedly, his Aunt was in debt. He stated that he only had one pair of pants and one shirt to wear to school. He spent much of his time at his neighbor's, Donna Lawrence, house. There is no relation between Donna Lawrence and the subject's aunt, Marie. Ms. Lawrence would provide the subject with clothes and help him with his school work and food. He would stop by Ms. Lawrence's house before and after school. His Aunt did not know about Ms. Lawrence.

After spending over a year with his Aunt, the subject was "boarded out" with Sonia Hodges, a friend of his mother. The subject explained "boarded out" as a place that his mother secured and paid for him to stay including an allowance for clothes and food. He described his stay with Ms. Hodges as "okay." He was provided the basic essentials for daily living and did not suffer from any abuse within the household. On one occasion, he was at a soccer field in the neighborhood when he was attacked by a group of kids. Five older boys were picking on him. They removed his pants and shirt and made him run around the soccer field naked. Shortly after the incident he moved from the area and lived with his cousin, Simone Powell.

The subject lived with Ms. Powell, for five months in Spaldings, Jamaica. He described this arrangement as "perfect." His cousin was younger than his previous caretakers and more educated. She did not use "corporal punishment." She would ask the subject to do something and he would do it. The subject reported that she talked to him when he initially moved in and explained her expectations of him. Reportedly, Ms. Powell supported the subject financially as his mother did not send any money. The subject's stay with Ms. Powell was short lived. Ms. Powell was a teacher and enrolled the subject at her school without his mother's permission. The subject's mother found out and sent the subject to a boarding house with the Robinsons.

For approximately eight months, the subject was boarding with the Robinsons. He described the Robinsons as "nice people but boring." He was provided the basic essentials for daily living and did not suffer from any abuse within the household. After eight months, he had to return to the Hodges' home because he needed to obtain cheaper accommodations as his mother was unable to pay the Robinsons for his lodging. He described his second stay with the Hodges as "rough." He stated that he was not paid attention to because his mother was unable to send enough money to support him. He indicated that he was provided the basic essentials although his laundry would not be cleaned and sometimes he needed a haircut.

(Continued... See Addendum)

Continuation Sheet

REF: Malvo, Lee**Narrative of Family/Environmental Information - Continued**

The subject reported that when he was 12, he again asked his father if he could live with him and his father told him no. He did not have any contact with his father after this time. When asked why he was unable to stay with his mother for the past 10 years, the subject indicated that his mother needed to maintain employment. In order to keep a job, she would need to migrate, illegally, to other islands. Some of the islands required residency permits which his mother did not have.

The subject left the Hodges and moved in with a teacher, Ms. Winson Maxwell. He lived with Ms. Maxwell for six months in Aenion, Jamaica. He described his stay with Ms. Maxwell as "perfect." He was provided more than the basic essentials for daily living and suffered no abuse. After six months, the subject migrated to the island of Antigua to be with his mother. He was 14 years old.

The subject stayed with his mother in Antigua for approximately four months. His mother then left and moved to St. Marten, leaving the subject on his own. The subject stated that he lived on his own for over seven months. Before she left, the subject's mother paid his school tuition, four months of rent and gave him enough money to purchase food for three months. A friend of the subject's mother, Theodore Williams, would allegedly check on the subject every two weeks. The subject indicated that Mr. Williams would purchase groceries and leave \$150 after every visit. In order to financially support himself, the subject would copy music compact discs and sell them. After seven months, the subject went to St. Marten to reside with his mother for the summer. At this time, the subject and his mother attempted to enter the United States illegally but their plans did not work. Subsequently, the subject returned to Antigua. He stayed in Antigua until May 2001.

The subject was 15 when he first met Mr. Mohammad, the co-defendant in this case. He used to frequent a computer shop where he liked to play a video game resembling a flight simulator. He noticed Mr. Mohammad laughing with his son and explaining how to play a game. The subject was immediately "attracted" to Mr. Mohammad because of his relationship with his son. The subject returned to the store a few more times and ran into Mr. Mohammad.

In November 2000, the subject's mother met Mr. Mohammad. She heard that Mr. Mohammad was successful in his ability to "smuggle" people into the United States. He provided her with documents such as a birth certificate. She was instructed to remember the information within the documents thus making it easier for her to enter the United States should she be questioned. In December 2000, the subject's mother was taken by Mr. Mohammad to the United States. She subsequently married Jeremiah Neal in order to become a legal resident. While his mother was in America, the subject was in Antigua. From January 2001 until May 2001, the subject lived with Mr. Mohammad and his three children. Mr. Mohammad introduced the subject to a form of Islam and the subject adopted his beliefs. The subject stated that he trusted Mr. Mohammad like a father.

In May 2001, Mr. Mohammad escorted the subject into the United States. They entered through Puerto Rico and stayed in Ft. Lauderdale for two weeks. He then went to live with his mother and Mr. Neal in Ft. Myers, Florida. The subject reported that Mr. Neal would threaten to report his mother to the authorities because of her illegal status if she did not pay him. This caused conflict with the subject. He enrolled in

(Continued... See Addendum)

5b

Continuation Sheet

REF: Malvo, Lee**Narrative of Family/Environmental Information - Continued**

school and wanted to attend college. In order to attend college he needed to take the SAT's or ACT's and to take the tests he needed a Social Security number. It appears that although the subject's mother married an American, the necessary paper work for residency was never completed and the subject was unable to obtain a Social Security number. The subject told his mother that Mr. Mohammad would adopt him and then he could go to college. Initially, the subject's mother agreed with the idea but disagreed when she found out that Mr. Mohammad was a Muslim. Subsequently, the subject ran away. He rode a Greyhound Bus to Washington State where he planned to live with Mr. Mohammad.

On October 20, 2001, the subject traveled to Bellingham, Washington. He knew that his mother would be looking for him, so he changed his bus route several times and used the alias "Mark Mathias" to avoid being detected. Upon arrival, Mr. Mohammad told the subject to contact his mother to let her know he was safe. While living with Mr. Mohammad, the subject continued to call his mother once a week. She did not want the subject staying with Mr. Mohammad so she traveled to Bellingham to pick him up but the subject refused to go with her. She went to the authorities and stated that Mr. Mohammad kidnapped her son. In order to prove she was the subject's mother, she had to provide her Jamaican Passport. Subsequently, the subject and his mother were arrested for being in the United States illegally. The subject was sent to the Juvenile Detention Center in Spokane, Washington where he stayed for a month. He was released to his mother and they stayed at a Safe House in Bellingham. After three days, the subject ran away again to be with Mr. Mohammad. In January 2002, they met in Tacoma, Washington. The subject reportedly did not have contact with his mother again until after his arrest.

From January 2002 until the end of February 2002, the subject stated that he underwent "training" with Mr. Mohammad. He learned military tactics and survival skills. He was also taught how to run the business of smuggling people into America. The subject stated that part of the reason he went to Washington State was to help Mr. Mohammad obtain his children he lost in a custody battle. In March 2002, they traveled across the United States looking for Mohammad's children. They traveled down the West Coast, across the South and up the East Coast. They carried military duffel bags and used Greyhound Buses. They carried rifles and handguns which would break down and fit into their bags. They followed "three phases: training, missions and getting children back." The missions included obtaining donations or collections through means of robberies. The subject reported that the money they obtained was kept in North Carolina until they needed it.

In July 2002, they found Mr. Mohammad's children in Maryland. The only part of the plan to get the children back that the subject knew was for Mr. Mohammad to pick up the children and put them in the car. The subject reported that Mr. Mohammad would not tell him the exact details because the more information that was known, the better the chance that the plan could be thwarted. The subject stated that Mr. Mohammad had a relentless personality. They "reconned" near the house where Mr. Mohammad's children were staying, studying the area for several days, but they never went after the children. Subsequently, they left the area and went to Raleigh, North Carolina. The subject reported that the base of operations was in Raleigh where they stored money, guns, ammunition and grenades.

While on their travels it is reported that Mr. Mohammad showed the subject the inner cities, slums and

(Continued... See Addendum)

5c

Narrative of Family/Environmental Information - Continued

ghettos. He wanted to show the subject what they were going to change. The intention was to change the community and to make up their own rules; reportedly, to have utopia.

From March 2002 until his arrest for the Instant Offense, the subject and Mr. Mohammad traveled across the United States. Mr. Mohammad gave the subject "missions" to complete. The subject was training to learn to withdraw from his emotions. He stated, "Pretty much to make me heartless." He and Mr. Mohammad spent a week in Louisiana in August 2002. The subject reported that this week was tough for him. It was then that he decided that he had enough. He began to think that he no longer wanted to participate in the missions. He thought about running away, but it would not have worked. Mr. Mohammad was his father and he could not leave. He stated that Mr. Mohammad became his universe. The subject then decided to end his life. He reported that he took a .22 caliber gun and played "Russian Roulette" four times. The subject never mentioned his suicide attempt to Mr. Mohammad because it would have been a sign of weakness. Allegedly, Mr. Mohammad knew that the subject was having second thoughts, but he was able to talk the subject out of his own way of thinking. They had long discussions relating to their missions. The subject indicated that they debated the pros and cons about their missions, but Mr. Mohammad always had the best argument.

Offender Personal History

REF: Malvo, Lee

EDUCATION	Highest Education Achievement Years 11 Years	Name/Location of Last School Attended Bellingham High School, Bellingham, Washington
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Education Narrative

The subject reported that he last attended school in the State of Washington. He stated that he went to 10 or 11 different schools while growing up. He received average grades and did not incur any disciplinary problems. He enjoyed school and did not want to withdraw. He is currently working to obtain his GED.

Records submitted by Defense Attorney Craig S. Cooley indicated that the last school the subject attended was Bellingham High School in Bellingham, Washington from November 2001 until January 2002. He was to graduate in 2002.

MILITARY HISTORY	N/A	Current Military Status <input type="checkbox"/> None <input type="checkbox"/> Reserve <input type="checkbox"/> Active	Length of Service Years Months
Dates of Service To	Type of Discharge <input type="checkbox"/> Honorable <input type="checkbox"/> Medical <input type="checkbox"/> General <input type="checkbox"/> Undesirable <input type="checkbox"/> Bad Conduct <input type="checkbox"/> Dishonorable <input type="checkbox"/> Member at Time of Offense <input type="checkbox"/> None <input type="checkbox"/> Unknown		

Military History Narrative

SOCIAL/RELIGIOUS ACTIVITIES	Social Activities <input type="checkbox"/> None Specified <input checked="" type="checkbox"/> Constructive <input type="checkbox"/> Non Constructive
Religion <input type="checkbox"/> Active <input type="checkbox"/> Inactive <input checked="" type="checkbox"/> None	Religious Preference <input type="checkbox"/> Protestant <input type="checkbox"/> Catholic <input type="checkbox"/> Jewish <input type="checkbox"/> Other <input type="checkbox"/> Moslem <input type="checkbox"/> Muslim <input type="checkbox"/> Unknown <input checked="" type="checkbox"/> No Preference

Social/Religious Activities Narrative

The subject reported that he had no religious preference.

The subject's leisure activities include, reading, biking and hiking.

Offender Personal History Continued

REF: Malvo, Lee

EMPLOYMENT HISTORY	Employment at Time of Offense <input type="checkbox"/> Full Time <input type="checkbox"/> Part Time <input type="checkbox"/> Full Time Student <input type="checkbox"/> Housewife <input type="checkbox"/> Retired/Disabled <input checked="" type="checkbox"/> Unemployed		
	Type of Employment <input type="checkbox"/> Skilled <input type="checkbox"/> Semi-Skilled <input type="checkbox"/> Unskilled <input type="checkbox"/> Student <input checked="" type="checkbox"/> N/A	Description of Occupation UNEMPLOYED	Occupation Code 904
Length of Longest Employment Years 0 Months 0 <input type="checkbox"/> N/A		Longest Employment Period Within Past Two Years Years 0 Months 0	
Employment Record Over Past Two Years <input type="checkbox"/> Regular, Few Changes <input type="checkbox"/> Regular, Many Changes <input type="checkbox"/> Irregular <input type="checkbox"/> Odd Jobs Only <input checked="" type="checkbox"/> No Work Record			

Employment History Narrative

The subject's only reported employment was selling compact discs in Antigua.

FINANCIAL STATUS	Residence <input type="checkbox"/> Owner <input type="checkbox"/> Rent <input checked="" type="checkbox"/> Other	Checking Account No	Savings Account No	Gross Monthly Income Claimed \$0.00
	Total Indebtedness Claimed \$0.00	Total Monthly Payments Claimed \$0.00	Source(s) of Subsistence <input type="checkbox"/> Job <input type="checkbox"/> Public Assistance <input type="checkbox"/> Spouse <input type="checkbox"/> Family <input type="checkbox"/> Other <input checked="" type="checkbox"/> None	

Financial Status Narrative

Officer Personal History Continued

REF: Malvo, Lee

HEALTH INFORMATION	Physical Health Condition <input checked="" type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Poor	Physical Handicaps No	Mental Health Treatment No	Mental Health Commitment No
	Type(s) of Mental Health Treatment <input type="checkbox"/> In-Patient <input type="checkbox"/> Out-Patient <input checked="" type="checkbox"/> N/A		Type(s) of Mental Health Commitment <input type="checkbox"/> Involuntary <input type="checkbox"/> Court-Ordered Evaluation <input type="checkbox"/> Voluntary <input checked="" type="checkbox"/> N/A	
Drug Use Claimed <input checked="" type="checkbox"/> None Used <input type="checkbox"/> Heavy Use <input type="checkbox"/> Moderate Use <input type="checkbox"/> Occasional Use <input type="checkbox"/> Extent Unknown		Drug Abuse Apparent No	Drug Treatment No	
Types of Substances Claimed <input checked="" type="checkbox"/> Not Used <input type="checkbox"/> Hallucinogens <input type="checkbox"/> Heroin <input type="checkbox"/> Opium <input type="checkbox"/> Cocaine <input type="checkbox"/> Synthetic Narcotics <input type="checkbox"/> Marijuana <input type="checkbox"/> Amphetamines <input type="checkbox"/> Barbiturates <input type="checkbox"/> Type Unknown <input type="checkbox"/> N/A				
Alcohol Use Claimed <input checked="" type="checkbox"/> Not Used <input type="checkbox"/> Heavy Use <input type="checkbox"/> Moderate Use <input type="checkbox"/> Occasional Use <input type="checkbox"/> Extent Unknown		Alcohol Abuse Apparent No	Alcohol Treatment No	
Height 5 Ft. 6 In.	Weight 130 lbs.	Color Eyes <input type="checkbox"/> Black <input type="checkbox"/> Blue <input checked="" type="checkbox"/> Brown <input type="checkbox"/> Green <input type="checkbox"/> Grey <input type="checkbox"/> Hazel <input type="checkbox"/> Mismatched <input type="checkbox"/> Pink	Color Hair <input type="checkbox"/> Auburn <input type="checkbox"/> Bald <input checked="" type="checkbox"/> Black <input type="checkbox"/> Blond <input type="checkbox"/> Brown <input type="checkbox"/> Grey <input type="checkbox"/> Other <input type="checkbox"/> Red <input type="checkbox"/> Sandy <input type="checkbox"/> White	
Scars, Marks, Tattoos				

Health Information Narrative

The subject is reported to be in good health. He has never suffered from any serious illnesses nor been diagnosed with any mental health disorders. He indicated that he was depressed as a child because he felt alone. He has never taken any medication for his mental state. Currently, he feels depressed but only sometimes; approximately one day a month but it fluctuates. He stated that he "gets down" because he is incarcerated.

When the subject was 12, he threatened to commit suicide. He was tired of his mother leaving him alone. He tied a sheet around his neck and threatened to hang himself if his mother left. She stayed a few more days and prior to her departure and then gave him a "butt kicking."

Since the age of 11, the subject has been unable to express emotions verbally and physically. He stated that he was always sad and crying. He soon realized that after he would cry, his problem would still be there so he stopped crying. He learned that if he felt anything, he had the ability to suppress it.

This Officer received two mental health evaluations conducted on the subject. Dr. Dewey Cornell was retained by the Defense and Dr. Evan Nelson was retained by the Commonwealth. Both evaluations were submitted during the trial for the Instant Offenses. Dr. Cornell opined that the subject was under "extreme mental and emotional disturbance at the time of the alleged offense." Dr. Nelson concurred with the Defense's expert that the subject was "highly influenced by John Mohammad" but disagreed with the subject suffering from Dissociation Disorder.

The subject denies ever using alcohol or illicit substances.

(Continued... See Addendum)

Continuation Sheet

REF: Malvo, Lee

Health Information Narrative - Continued

Substance Abuse Screening was completed on 01/08/2004.
Substance Abuse Assessment was not done.

Community Supervision Plan & Summary

REF: Malvo, Lee

COMMUNITY SUPERVISION PLAN	Residence Plan					
	<input type="checkbox"/> Alone	<input type="checkbox"/> Parents	<input type="checkbox"/> Spouse	<input type="checkbox"/> Spouse/Dependent	<input type="checkbox"/> Other Relative	<input type="checkbox"/> Employer <input checked="" type="checkbox"/> Other
Residence			Employment			
Name	N/A		Name	N/A		
Address			Address			
Telephone			Telephone			
Offender's Plan of Restitution						
None						
Offender's Community Plan to Help Self						
N/A						
Community Resource Proposed for Offender Assistance						
N/A						
Recommendation						
<input type="checkbox"/> Probation <input type="checkbox"/> Community Plan <input checked="" type="checkbox"/> Incarceration <input type="checkbox"/> Other <input type="checkbox"/> No Recommendation						

Recommendation Summary

The subject appears before the Court for sentencing on two charges of Capital Murder and one count of Using a Firearm in the Commission of a Felony to which he entered pleas of not guilty by reason of insanity. A jury found him guilty on all three charges and recommended life imprisonment.

The subject grew up in an unstable environment. After his parents separated, he lived with his mother but for only a short while. His mother left the subject with various families in order to obtain employment. The subject moved from home to home, sometimes enjoying his stay, sometimes not. He stayed with families who cared for him and families that ignored him. It could not be verified whether or not the subject suffered serious physical abuse while in a boarding home. He reported one abusive household, the Richards, but it appeared that he was disciplined for not doing chores, not abused. The subject lacked any familial support and stability until he met Mr. Mohammad. The first time he met Mr. Mohammad, he was immediately attracted to him. The subject wanted a family and a parent to love him. He liked the way Mr. Mohammad interacted with his own son.

Mr. Mohammad was a father figure to the subject. He called him "Dad" and stated that he was his "universe." When asked if he misses Mr. Mohammad, the subject responded that he misses the man he first met in Antigua. Before the subject could see that Mr. Mohammad was a different person, he already had trust in him. He sometimes gets mad at Mr. Mohammad. He has good and bad memories of their time together. He understands that he was used and was just a "puppet" for Mr. Mohammad: "I was a means to

(Continued... See Addendum)

Continuation Sheet

REF: Malvo, Lee**Recommendation Summary - Continued**

an end." His good memories include going to the movies together, hiking and doing father and son "stuff."

Since his arrest for the Instant Offenses, the subject has learned that "nothing is what you think it is. Before you act on something you should know it yourself, make your judgements on your knowledge and experience, not what someone else says."

The subject would not admit to his role in the Instant Offenses. He expressed no remorse towards the victims or their families. He stated that what he did does not make sense. He initially wanted to help people, but he subsequently took away children's parents. He stated, "It's not rational." He indicated that he was emotionless at the time of the offenses. His only focus was to not feel. He reported that the objective was to accomplish the missions without feeling and continue to not feel after the mission was complete. When asked if the subject knew that his actions in the Instant Offenses were wrong and illegal, he stated that he knew that what he did was illegal, but was taught that right and wrong were based on a perception.

The subject stated that he lives for now, because he does not know what tomorrow will bring. He was happy in the fact that the jury recommended life in prison versus the death penalty. Unfortunately, the victim did not have that option. The subject stated that he is sometimes remorseful, but he does not allow himself to "go there." He is able to disassociate himself from the world. This would explain his lack of remorse and the fact that he does not appear to see how serious the consequences have been.

The subject was cooperative in providing information for this report. He was calm and jovial. He smiled often and would even laugh at times. The subject appeared to be cunning and intelligent. He indicated that he has always had good intentions, he was just at the wrong place at the wrong time when he met Mr. Mohammad.

(Continued... See Addendum)

9a

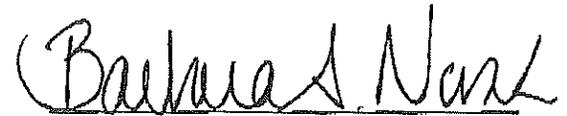
Continuation Sheet

REF: Malvo, Lee

Recommendation Summary - Continued

The information provided in this report is submitted for the Court's consideration. There are no guidelines for these offenses.

Reviewed by: 



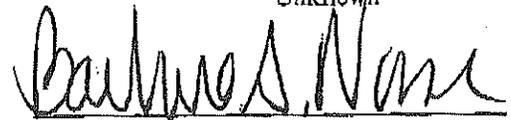
Probation & Parole Officer
Barbara A. Novak

Criminal History Attachment

PRIOR RECORD	Offender's Name (Last, First, Middle) Malvo, Lee Boyd		
FBI Number 596094VB9	State ID Number (CCRE)	Local P.D. Number	
Race Black (not Hisp.)	Sex Male	Date of Birth 02/18/1985	Social Security Number

Criminal History Narrative

<u>Date</u>	<u>Jurisdiction</u>	<u>Charged Offense</u>	<u>Convicted Offense</u>	<u>Sentence Date</u>	<u>Sentencing</u>
12/19/2001(A)	US Border Patrol	Removal Proceedings	Unknown		Unknown
10/22/2002(A)	Fairfax Co., VA CIR	1) Capital Murder 2) Capital Murder 3) Using a Firearm in the Commission of a Felony	Same Same Same	03/10/2004 03/10/2004 03/10/2004	1) Instant Offense 2) Instant Offense 3) Instant Offense
10/24/2002(A)	US Border Patrol	Illegal Entry	Unknown		Unknown



Probation & Parole Officer
 Barbara A. Novak



State of Maryland
Department Of Public Safety And Correctional Services
DIVISION OF PAROLE AND PROBATION

PRE-SENTENCE INVESTIGATION

OFFENDER INFORMATION

CHARGE NAME: Malvo, Lee Boyd
TRUE NAME:
ALIAS: John Lee Malvo, Lee Boyb Malvo,
John Weekly, Lee Williams Jr., Lee
Muhamed, John Lee Muhammad and Mark
Mathias
ADDRESS: MCCF-22880 Whelan Lane
Boyds, Maryland 20841
SEX: Male **RACE:** Black
HEIGHT: 5'5" **WEIGHT:** 125 lbs.
DATE OF BIRTH: 2/18/1985 **AGE:** 21
PLACE OF BIRTH: Kingston, Jamaica
TELEPHONE NUMBER: None
LICENSE NUMBER: None
FBI NUMBER: 596094VB9
SSN: None
SID NUMBER: 2785193

COURT INFORMATION

COURT: Montgomery County Circuit
STATE'S ATTY: Ms. Katherine Winfree
DEFENSE ATTY: Mr. Brennan and Mr.
Sullivan
SENTENCING DATE: 11/9/06
OFFENSE: Ct. 1 Murder First Degree, Ct. 2
Murder First Degree, Ct. 3 Murder First
Degree, Ct. 4 Murder First Degree, Ct. 5
Murder First Degree and Ct. 6 Murder First
Degree
TRIAL JUDGE: James Ryan
TRIAL: Court **DATE:**
10/10/06
PLEA: Guilty
CUSTODY STATUS: Incarcerated
DETAINERS: IAD (Virginia)
DOCKET NUMBER: 102675
TRACKING NUMBER: 021001762773

INVESTIGATOR INFORMATION

DATE REFERRAL RECEIVED: 10/11/06
INVESTIGATOR: Argo F. Campbell
PHONE NUMBER: (301) 998-6709
DATE COMPLETED: 11/01/06
FILE NUMBER: MAL82420

PRE-SENTENCE INVESTIGATION
(Malvo, Lee Boyd) (DOB: 2/18/85)

This report is for official court and departmental use only. Information contained herein is confidential and protected by both state and federal laws and regulations. This report is not available for public inspection other than as outlined under Title 6, Section 112 of the Correctional Services Article.

PRE-SENTENCE INVESTIGATION
(Malvo, Lee Boyd) (DOB: 2/18/85)

PERSONAL HISTORY

The defendant submitted he has not spoken with his father since 2003. In regards to his mother, Malvo stated "whenever she wanted something she would write". The defendant's last correspondence with her was in 2005.

EDUCATION

HIGHEST EDUCATION LEVEL:

At interview, the subject submitted he earned his high school degree through correspondence at American School in Lansing, Illinois while incarcerated at the Red Onion Facility in December of 2004. Malvo further noted he was recently accepted into a degree program at California Coast University to pursue a degree in psychology.

On 10/12/06, this writer spoke with Ms. Barbara James of the Model Learning Program who indicated she would be proctoring his college courses from California Coast University.

EMPLOYMENT

No additional information was supplied.

HEALTH

On 10/12/06, this writer spoke with Patricia Solack, Chief of Mental Health Services at the MCCF. She indicated her initial contact with the defendant was during John Allen Mohammad's trial. Ms. Solack saw Malvo "only as needed, for assessment to make sure he was OK". She stated, "the more I saw of him, saw he progressively began to self-disclose emotions and feelings for which I began therapy sessions on a weekly basis". During said sessions, Solack described the defendant as polite, cooperative, very smart, very well read. He likes to introspect and wants to find meaning for why he committed the crimes and what prompted him. He is fully aware he may be sent to life if not death and regardless wants to find ways to do something positive for the family of the victims.

Ms. Solack further noted the defendant handles stress well, structures his hours well with activities, writing poetry, exercising, keeping a journal and completing homework for therapy.

PRE-SENTENCE INVESTIGATION
(Malvo, Lee Boyd) (DOB: 2/18/85)

Ms. Solack diagnosed the defendant as suffering from "borderline traits with severe separation and attachment issues" (struggles with issues of rejection by his mother). The defendant has not been prescribed any type of psychotropic medications.

Attached will be a report completed by Neil Blumberg, M.D. as a result of his forensic psychiatric evaluation of the defendant for the capital murder case in Fairfax, Virginia-report dated 10/1/03. A second report was prepared by Carmeta Albarus-Lindo, a license social worker and Denese Shervington, M.D., a forensic psychiatrist and Director of Psychiatry at Harlem Hospital in New York City-report dated 10/25/06.

The defendant describes his current health as "OK".

He denies having an alcohol problem and further denies ever experimenting with any type of illegal drugs.

FINANCIAL

<u>ASSETS</u>	<u>AMOUNT</u>
Canteen	\$50.00

<u>OBLIGATIONS</u>	<u>AMOUNT</u>
None	

OTHER SIGNIFICANT FACTORS

Contact with Paula Slan of the state's attorneys office revealed oral and written victim impact statements will be presented on November 9, 2006.

On 10/12/06, this Agent spoke with Mr. Gregory Green, Correctional Specialist IV at the MCCF. He indicated the defendant is assigned to the Secure Housing Unit. Mr. Green submitted Malvo "is no problem" and has accrued no infractions thus far. He basically "does everything asked to do".

RECOMMENDATION

In view of the fact the Instant Offenses resulted in the deaths of James D. Martin, James S. Buchannan, Prenual Walekar, Maria Sarah Ramos, Lori Ann Lewis-Rivera and Conrad Johnson it is recommended the defendant be sentenced to serve six Life terms consecutively without the possibility of parole as indicated in the Maryland Sentencing Guidelines.

PRE-SENTENCE INVESTIGATION
(Malvo, Lee Boyd) (DOB: 2/18/85)

Gerald Stewart, FSI

(R, GS) 11/2/06

Argo F. Campbell, Agent Senior

Argo F. Campbell 11/1/06



DISTRICT COURT OF MARYLAND FOR Montgomery (City/County)

LOCATED AT (COURT ADDRESS)



RELATED CASES:

COMPLAINANT/APPLICANT

DEFENDANT

THOMSON, Roger L.
Name (Print)
2350 Research Boulevard
Address (Number and Street)
Rockville, MD 20850
City, State, and Zip Code
MD, 15, #215 Telephone
Agency, Sub-Agency, and I.D. # (Officer Only)

MALVO, John Lee AKA: MALVO, Lee
Name (Print)
AKA: 2217 Woburn Street
Address (Number and Street)
Bellingham, WA
City, State, and Zip Code Telephone
CC#

DEFENDANT'S DESCRIPTION: Driver's License # Sex M Race B Ht 5'5" Wt 125
Hair Blk Eyes Brn Complexion Other Alien #A79-807-099 D.O.B. 02/18/85 ID

APPLICATION FOR STATEMENT OF CHARGES

Page 1 of 8

I, the undersigned, apply for a statement of charges and a summons or warrant which may lead to the arrest of the above named Defendant because on or about OCT 2 through OCT 22, 2002 SEE NARRATIVE at the above named Defendant

(Concise statement of facts showing that there is probable cause to believe that a crime has been committed and that the Defendant has committed it):

See Attached Continuation

(Continued on attached pages) (DC/CR 1A)

I solemnly affirm under the penalties of perjury that the contents of this Application are true to the best of my knowledge, information and belief.

10/25/02
Date

Signature of Applicant

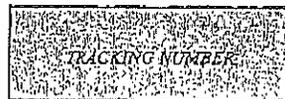
I have read or had read to me and I understand the Notice on the back of this form.

Subscribed and sworn to before me this 25 day of October 2002
Time: 1:30 P M Judge/Commissioner I.D. 6501

I understand that a charging document has been issued and that I must appear for trial on at when notified by the Clerk, at the Court location shown at the top of this form.

I declined to issue a charging document because of lack of probable cause.

Witnesses' Names and Addresses:
Name Number and Street/Agency/Sub-agency/I.D. City, State, Zip



DISTRICT COURT OF MARYLAND FOR Montgomery County

(City/County)

LOCATED AT (COURT ADDRESS)

DISTRICT COURT CASE NUMBER

DEFENDANT'S NAME (LAST, FIRST, MI)
Malvo, John L.

APPLICATION FOR STATEMENT OF CHARGES (CONTINUED) Page 2 of 8

On October 2, 2002, at 1715 hours Montgomery County Police responded to Michael's Store at 13601 Connecticut Ave. Silver Spring, Montgomery County, Maryland for the report of a shooting. The investigation revealed that an unknown person had shot through the front glass window with a high powered rifle. Once the projectile went through the window it struck a sign stanchion. Bullet fragments were later recovered from inside the store. The store was open and employees as well as customers were inside the store at the time. Only one shot was heard.

Later that same evening, at 1802 hours, in the Shoppers Food Warehouse parking lot at 2201 Randolph Road, Wheaton, Montgomery County, Maryland, Montgomery County Police responded to the report of a person who had been shot. Investigation revealed that James Darrell Martin had just parked his car in the parking lot and was walking towards the store when he was shot and killed with a high powered firearm. Martin had been shot in the back and was killed immediately. No bullet fragment or shell casing was recovered from the scene. Only one shot was heard.

The next morning on October 3, 2002, at 0738 hours on Huff Ct., Rockville, Montgomery County, Maryland, James S. Buchanan was cutting grass when he was shot in the back by a high powered firearm. Buchanan was transported to Suburban Hospital where he died. Bullet fragments were recovered but were inconclusive for comparison purposes.

A short time later, at 0810 hours, Premkumal Walekar was at the Mobil gas station at 4100 Aspen Hill Rd., Wheaton, Montgomery County, Maryland. While he was standing to the rear of his vehicle pumping gas he was shot in the back by a projectile from a high powered firearm. He staggered to another car and collapsed. He was transported to Montgomery General Hospital where he died. Bullet jacket fragments were recovered from his torso at autopsy. Only one shot was heard.

10/25/02
Date

Ray J. Johnson
Applicant's Signature

TRACKING NUMBER

DISTRICT COURT OF MARYLAND FOR Montgomery County

(City/County)

LOCATED AT (COURT ADDRESS)

DISTRICT COURT
CASE NUMBER

DEFENDANT'S NAME (LAST, FIRST, MI)
Malvo, John L.

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A short time later, at 0837 hours, Maria Sarah Ramos was sitting on a sidewalk bench in front of 3800 International Dr., Silver Spring, Montgomery County, Maryland. She was shot in the head one time with a high powered firearm and killed. The projectile then passed through the glass window of the store behind her. A bullet jacket fragment was recovered from inside this store. Only one shot was heard.

Later that same morning at 0958 hours, Lori Ann Lewis-Rivera was at the Shell gas station at 10515 Connecticut Avenue, Kensington, Montgomery County, Maryland. While standing outside of her vehicle she was shot from behind by a high powered firearm. She collapsed to the ground and died. Bullet jacket fragments were recovered from her torso at autopsy. Only one shot was heard.

Later that evening on October 3, 2002, at 2115 hours, at the corner of Georgia Ave. and Alaska Ave., NW, Washington, D.C., police responded to a call for a person shot. Investigation revealed that Pascal Emile Charlot was on the sidewalk facing west as if to cross the roadway when he was shot once in the chest and subsequently died. He was shot with a high powered firearm and bullet jacket fragments were recovered from his body. Only one shot was heard.

On October 4, 2002, a woman was in front of a Michael's store in Spotsylvania County, Virginia when she was shot from behind one time by a high powered rifle. A large fired bullet exited her body and was recovered at the scene. She is still alive at this time. Only one shot was heard.

On October 7, 2002 at 0809 hours a thirteen year old boy had exited a vehicle and was walking towards Benjamin Tasker Middle School in Bowie, Prince George's County, Maryland when he was shot by a high powered rifle. Bullet jacket fragments were recovered from his body during surgery. Also recovered at the scene was a .223 shell casing. A taro card was also found that had writing on it. As of this time the victim is

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(City/County)

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still alive. Only one shot was heard.

On October 9, 2002 Dean Harold Myers was in the process of getting gas at the Battlefield Sunoco located 7203 Sudley Rd., Manassas, Virginia. At 2010 hours he was shot in the head with a high powered firearm and died. Bullet fragments were recovered. Only one shot was heard.

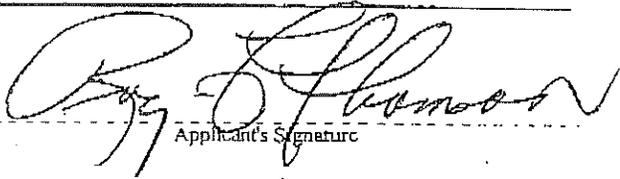
On October 11, 2002 Kenneth H. Bridges was in the process of filling his vehicle with gasoline at the Four Mile Fork Exxon located at 5326 Jefferson Davis Highway, Spotsylvania, Virginia. At 0928 hours he was shot in the back by a high powered firearm and died of his injuries. Bullet fragments were recovered. Only one shot was heard.

On October 14, 2002 at 2115 hours Linda Franklin was exiting the Home Depot located at 6217 Seven Corners Center, Arlington, Virginia when she was shot in the head by a high powered firearm. She died of her injuries on the scene. Bullet Fragments were recovered. Only one shot was heard.

On October 15, 2002 a male subject called into Rockville City 911 dispatcher and began to leave a message in which he implied he was the person responsible for these murders. This call was recorded in accordance with Rockville City Police Department policy and procedure.

On October 19, 2002 a 37 year old white male was walking in the parking lot of the Ponderosa Restaurant in Ashton, Virginia, when he was shot in the stomach with a high powered firearm. He survived his injuries and is still alive. Crime scene investigation determined the shot came from nearby woods and a hand written note was found there addressed to the police by an individual who identified himself as the person responsible for these murders. Only one shot was heard.

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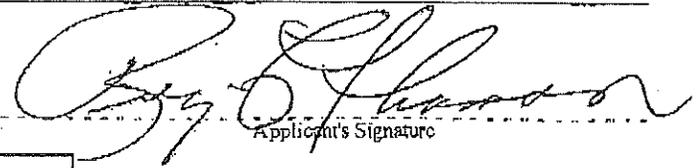
On October 22, 2002, Conrad Johnson was on a Ride-On bus stopped in the 14100 block of Grand Pre Road, Silver Spring, Montgomery County, Maryland when he was shot in the abdomen with a high powered firearm. He died a short time later. Bullet fragments were removed from his body at autopsy. A hand written note was left in the woods in the area where the shot was fired from. It was addressed to the police from the person(s) claiming responsibility for these shootings.

In all of these cases the victims were shot from an secreted position, with no apparent motive other than random violence against victims who were in the course of conducting normal everyday activities. Investigation revealed that their injuries are all consistent with those suffered from a high powered weapon. All of the incidents that occurred within Montgomery County occurred within a small geographic area.

The Maryland State Office of Chief Medical Examiners conducted autopsies on the remains of Martin, Buchanan, Walekar, Ramos, Lewis-Rivera and Johnson and ruled that their deaths were caused by single gunshot wounds and their manner of death was homicide in each case.

The bullet fragments recovered from the murder victims Lewis-Rivera, Ramos, Walekar, Charlot, Myers, Bridges, Franklin and Johnson as well as the assault victims in the shopping center, school, and the Ponderosa, were taken to the Bureau of Alcohol Tobacco and Firearms for ballistic examination. Firearm and Toolmark Examiner Walter Dandridge conducted the examination. Examiner Dandridge determined that all bullet jacket fragments had rifling characteristics that were the same and the individual characteristics identified the bullet jacket fragments as having been fired from the same firearm. The caliber of these bullets is a .223. One of the firearms that could have fired these bullets is a Bushmaster XM15-E2S.

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During the course of the Sniper Investigation, telephone calls taking credit for the sniper shootings were placed to law enforcement officials and to a private citizen. In these calls, the caller has made mention of his specific knowledge of the Montgomery, Alabama shooting, providing the exact neighborhood of the incident, referring to it as a liquor store robbery, and emphasizing his awareness of who actually participated in the shooting. The caller also indicates that the police should conduct ballistics testing of the bullet fragments in Montgomery, Alabama. Those calls also include specific identifying contents that match phrases left at three crime scenes within the Sniper Investigation. Specifically, the call uses phrases that appear on all three messages left for law enforcement at the scenes of shootings in Bowie, Maryland, Ashland, Virginia, and Silver Spring, Maryland. Those phrases were not released to the public.

Investigation into the Montgomery, Alabama shooting revealed that a suspect in that murder dropped a magazine as he fled the scene. Fingerprint evidence recovered from this magazine, a firearms catalog, was examined by Sniper Task Force investigators and found to match known prints of Lee Boyd Malvo, an illegal immigrant who had been arrested by the Immigration and Naturalization Service in Tacoma, Washington.

A concerned citizen from Tacoma, Washington, contacted authorities, advising he suspected that an individual named John Muhammad, previously known as John Williams, might be involved in the sniper homicides occurring in the Washington, D.C., area. This citizen and Muhammad had known each other for many years. Muhammad had told the citizen that Muhammad's former wife was currently living in the Washington, D.C., area. The citizen further indicated that on the last three occasions (the last of which was in August or September, 2002) Muhammad visited his home in Tacoma, he was accompanied by a young male whom Muhammad referred to by the nickname "Sniper." The citizen also said Muhammad told him he had met "Sniper" in the Caribbean.

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Greg L. Shannon
Applicant's Signature

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Investigators have determined that Malvo was born in Jamaica. Task Force investigators showed a photograph of Malvo to the citizen, who positively identified Malvo as the young man Muhammad introduced to him as "Sniper."

As a result of the investigation into these murders John Allen WILLIAMS, aka John Allen Muhhamad and John Lee MALVO, aka Lee MALVO were identified as possible suspects. Their description and the description of a vehicle being operated by them were broadcast on all television newscasts as a person of interest in the above named investigation. On October 24, 2002 John Allen WILLIAMS and John Lee MALVO were located in a vehicle in a rest stop in Frederick County, Maryland. MALVO was arrested on the strength of a Federal material witness warrant and WILLIAMS is being held, at this time, on a Federal firearms violation. A Bushmaster XM15-E2S .223 rifle was recovered in the vehicle which MALVO and WILLIAMS were found in at the Frederick County rest stop. This weapon was equipped with a bipod. This weapon was test fired by Examiner Dandridge at the Bureau of Alcohol, Tobacco and Firearms and he determined it to be the same firearm, to the exclusion of any other firearm that fired the bullets that were recovered from the bodies of the above mentioned homicide victims.

The vehicle they were arrested in is a 1990 Chevrolet Caprice, Blue in color, with New Jersey registration tag NDA 21Z. An examination of the vehicle revealed a hole cut through the rear trunk providing a portal from which a rifle could be fired from the interior of the trunk. The rear seat was modified in such a way as to provide access to the trunk from the passenger compartment. A cursory search revealed a pair of walkie-talkies, and maps. According to New Jersey Motor Vehicle Administration this vehicle is registered to John A. Muhammad, listing an address in Camden, New Jersey.

After Malvo and Muhammad were arrested, subsequent investigation has developed information that the above vehicle had been seen on multiple occasions in Montgomery County during the period when these murders were being committed.

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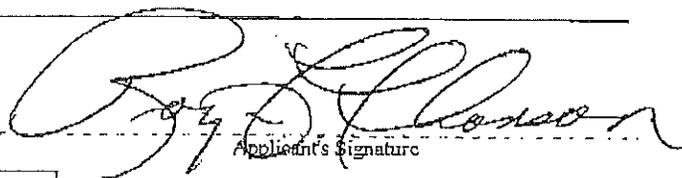
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Based on the above facts your applicant believes that probable cause exist to charge John Lee Malvo, aka Lee Malvo with six counts of First Degree Murder for the murders of James Darrell Martin, James S. Buchanan, Premkumal Walekar , Maria Sarah Ramos, Lori Ana Lewis-Rivera, and Conrad Johnson in violation of Criminal Law, Section 2-201, Maryland Annotated Code

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Figure 5-2. Criteria for Prior Record Worksheet

Offender's Name: Malvo, Lee Byrd Docket Number: #120075

JUVENILE DELINQUENCY			
Offender	Yes/No	Offense Title (w/ finding of delinquency)	Commitment Date
23 or older when current offense committed			
JUVENILE DELINQUENCY		<input type="checkbox"/> 1 Finding <input type="checkbox"/> 2 or More Findings/1 Commitment <input type="checkbox"/> 2 or More Commitments	

ADULT CONVICTIONS				
Seriousness Category	No.	Offense Title (Code, Art., & Sec.)	Disposition Date	Sentence
I	11	Capital Murder Capital Murder	3/10/07 "	3 2
II				
III	1	Use of a Firearm in the Comm. of a Felony	"	3 yrs (C)
IV				
V				
VI				
VII				
PRIOR ADULT CRIMINAL RECORD		<input type="checkbox"/> None <input type="checkbox"/> Minor <input type="checkbox"/> Moderate <input checked="" type="checkbox"/> Major		

Completed By: Axe

BRENNAN, SULLIVAN & MCKENNA, LLP

ATTORNEYS AT LAW
5407 WATER STREET
SUITE 105
UPPER MARLBORO, MARYLAND 20772

TIMOTHY J. SULLIVAN*
*ALSO ADMITTED IN D.C.
tsullivan@bsm-legal.com

(301) 952-1400
(301) 952-1480 FAX

October 31, 2006

VIA FACSIMILE (301-231-7391) AND REGULAR MAIL

Argo Campbell
Division of Parole and Probation
979 Rollins Avenue
Rockville, Maryland 20851

RE: Lee Boyd Malvo
State of Maryland v. Malvo
Criminal Number: 102675

Dear Ms. Campbell:

The purpose of this letter is to provide the Division of Parole and Probation with Mr. Malvo's written statement concerning acceptance of responsibility in the preparation of the presentence investigation in the above-captioned matter.

Acceptance of Responsibility

Lee admits and accepts full responsibility for the criminal conduct alleged in Counts One, Two, Three, Four, Five, and Six of the Indictment. By doing so, Mr. Malvo acknowledges the truth of the statement of facts proffered by Deputy State's Attorney Kay Winfree during the guilty plea hearing on October 10, 2006 and accepted by Judge Ryan as the factual basis for permitting the guilty plea.

Lee accepts complete responsibility for the six murders that occurred in Montgomery County, Maryland from October 2, 2002 through October 22, 2002.¹

Specifically, Lee agrees that he participated (either as a principal or as an accomplice) together with John Allen Muhammad in the commission of the following:

- Count One** The murder of James Darnell Martin on October 2, 2002 while Mr. Martin was walking towards the Shoppers Food Warehouse;
- Count Two** The murder of James S. Buchanan on October 3, 2002 while Mr. Buchanan was cutting grass with a mower;
- Count Three** The murder of Premkumar A. Walekar on October 3, 2002 while Mr. Walekar was pumping gas into his vehicle;
- Count Four** The murder of Maria Sarah Ramos on October 3, 2002 while Ms. Ramos was sitting on a shopping center bench;
- Count Five** The murder of Lori-Ann Lewis-Rivera on October 3, 2002 while Ms. Lewis-Rivera was standing outside her vehicle;
- Count Six** The murder of Conrad Johnson on October 22, 2002 while Mr. Johnson while aboard a Ride-One bus.

We are enclosing as an additional supplement two reports— both are incredibly germane to Lee's development, culpability, and future. The first is a report prepared by Neil Blumberg, M.D. as a result of his forensic psychiatric evaluation of Lee for the capital murder case in Fairfax, Virginia. Dr. Blumberg's report is dated October 15, 2003. The second report is a Pre-Sentencing Report prepared by Carmeta Albarus, a licensed social worker who has been part of Lee's Defense team since Virginia as well as from Denese Shervington, M.D., a forensic psychiatrist and Director of Psychiatry at Harlem Hospital in New York City. This report is dated October 25, 2006.

Both reports document this young man's life and struggles. However, for the purposes of this submission, two particular factors are of relevant note:

¹ Unless otherwise provided, this submission relates solely to the Indictment in the Circuit Court for Montgomery County, Maryland and Mr. Malvo's participation in those events.

In 2003, Dr. Blumberg concluded:

Although initially drawn to Muhammad out of his depression and the absence of a stable and loving parent, Lee was ultimately the victim of intense coercive persuasion that resulted in his losing his own sense of identity, becoming desensitized to an escalating pattern of violence and becoming totally dependent on and subservient to the dictates of Muhammad. Lee became a soldier in Muhammad's personal war on America. At the time of the offense, Lee Malvo was totally dominated in his thinking and behavior by John Muhammad.

As a result of John Muhammad's prolonged and intense coercive persuasion, it is my opinion to a reasonable degree of medical certainty, that on October 14, 2002, Lee Malvo was severely impaired in his ability to distinguish right from wrong and was severely impaired in his ability to resist the impulse to commit the act.

See Dr. Blumberg's Report, pages 6-7.

In 2006, Ms. Albarus and Dr. Shervington state:

In spite of the tremendous social tragedy that occurred during Lee's psychotic decompensation, with the mental health intervention that Lee has received, he currently exhibits evidence of remission and tremendous remorse for his wrong doings....

Today, Lee does not want his legacy to be merely "the sniper." He has successfully detangled himself from Muhammad's psychological hold, and was thus able to publicly denounce Muhammad and his teachings and to side with the victims when he took the stand in June of this year. John Lee Muhammad, the creation of Muhammad is dead, and Lee Boyd Malvo has been resurrected. He is determined to reclaim the path that was hijacked by Muhammad, and though Lee realizes that he faces the prospect of spending the rest of his life in prison, he believes that he owes it to his teachers, his friends, and most significantly to those who have been tragically affected by his actions, to make amends.

See Albarus/Shervington Report, page 19.

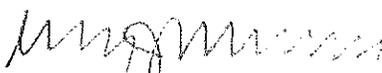
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Lee has, through the ensuing years, not only accepted his role in the murders of these six innocent individuals – selected at random – but has also articulated his sincere remorse, shame, and anguish over his role in these events. It is not generated from a sense of self-pity but rather from a sense that he – not John Allen Muhammad – finally now has the power to control his emotions and his life choices, however limited that may now be. These are choices that Lee can make now that were not an option for him when the teenager was under the complete control and dominion of John Allen Muhammad. Lee has made the choice to testify as a State's witness against Muhammad. Lee has made the choice to accept responsibility for the six murders committed in October 2002 in Montgomery County and enter a guilty plea – knowing full well that such a plea may result in six consecutive sentences of life without the possibility of parole. Lee has made the choice to meet with detectives from Tucson, Arizona to confess to the March 2002 murder of Jerry Taylor done at the direction of John Allen Muhammad. And, finally, Lee has made the choice to ask for forgiveness from the families of Mr. Martin, Mr. Buchannan, Mr. Walekar, Ms. Ramos, Ms. Lewis-Rivera and Mr. Johnson.

If we can provide any additional information, please feel free to contact either of us.

Very truly yours,

BRENNAN, SULLIVAN & McKENNA, LLP


Timothy J. Sullivan


William C. Brennan, Jr.

TJS/WCB:mn
Enclosures

Neil Blumberg, M.D., P.A.

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Diplomate, American Board of Forensic Psychiatry
Fellow, American Psychiatric Association

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Bethesda, Maryland 20814
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October 15, 2003

Michael S. Arif, Esquire
Craig S. Cooley, Esquire
Law Offices of Martin, Arif, Petrovich
and Walsh
Suite 105
8001 Braddock Road
Springfield, Virginia 22151

Re: Commonwealth v. Lee Boyd Malvo

Dear Messrs. Arif and Cooley:

Pursuant to your request, I have completed my forensic psychiatric evaluation of Lee Malvo, an eighteen year old, young man from Jamaica, who is charged with the Capital Murder (two counts) of Linda Franklin and Using A Firearm In The Commission of a Felony in an offense that occurred in Fairfax County, Virginia on October 14, 2002. The purpose of this evaluation was to determine if, at the time of the offense, as a result of a mental disease or defect, the defendant was legally insane.

In order to address the above issues, I reviewed numerous materials provided to me by your office, including, but not limited to, the following:

1. Discovery materials provided by Fairfax County, Virginia;
2. Discovery materials provided by Prince William County, Virginia;
3. Discovery materials provided by the F.B.I.;
4. Discovery materials provided by Montgomery County, Maryland;
5. Discovery materials provided by the Bellingham, Washington Police Department;
6. Videotapes and transcripts of the defendant's statements to the Fairfax County police and the substance of oral statements;
7. Oral statements and transcripts of testimony of Captain Joseph Stracke and Corporal Wayne Davis;
8. Videotapes of interviews of John Muhammad by the Montgomery County and Prince William County police;
9. Immigration file of Una James;
10. Harborview Medical Center records of Una James;

To: Michael S. Arif, Esquire
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11. Defendant's school records from York Castle High School and Spalding Comprehensive High School;
12. Defense investigator/mitigation specialist written and/or videotaped interviews with the following:
 - A. Earl Dancy;
 - B. Chris Marley;
 - C. Sylvia Sillas;
 - D. James Mitton;
 - E. James Fritzingler;
 - F. Rory Reublin;
 - G. Jerry Page;
 - H. Albert Archer;
 - I. Leslie Malvo;
 - J. Mrs. Reid;
 - K. Epsy James;
 - L. John Lawrence;
 - M. Marvin Blake;
 - N. Theodore Williams;
 - O. Leonie Martin;
 - P. Alissa Marez;
 - Q. Nathan Perry;
 - R. Jerome Braswell;
 - S. Mary Marez;
 - T. Peter David;
 - U. Ronald Todd;
 - V. Allan LaRowe;
 - W. Don Hoaland;
 - X. Lloyd Barrett;
 - Y. O'Neil Grove;
 - Z. Mr. Smith;
 - AA. Lula Bradshaw;
 - BB. Ena Crawford;
 - CC. Menda Gibbs;
 - DD. Marie Lawrence;
 - EE. Beverly Jack-Spence;
 - FF. Dorothy Livingston;
 - GG. Mrs. Nelson;
 - HH. Beverly Clark;
 - II. John Lawrence;
 - JJ. Carlana Powell;

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- KK. Dwayne Perry;
- LL. Onykeya Nevins;
- MM. Mellisha Coke;
- NN. Andrew McCloud;
- OO. Mrs. McCloud;
- PP. Mr. Johnson;
- QQ. Martha Robinson;
- RR. Marie Robinson;
- SS. Althea Wilson;
- TT. Webster Maxwell;
- UU. Winsome Maxwell;
- VV. Ms. Maxwell (Webster Maxwell's wife);
- WW. Rudolph Miller;
- XX. John Sewsanker; and,
- YY. Cheryl Morris;
- 13. Dateline interviews with Simone Powell and Una James; and,
- 14. Larry King interview with the Williams family.

I examined Lee Malvo at the Fairfax County Detention Center on twenty occasions between November 25, 2002 and October 14, 2003. I have reviewed the psychological test findings of Dewey Cornell, Ph.D. and David Schretlen, Ph.D. I have also conducted telephone interviews with the following individuals:

- 1. Una James;
- 2. Robert Holmes;
- 3. Lloyd Barrett;
- 4. Mrs. Esmie McCloud;
- 5. Leslie Malvo;
- 6. Steve Clark;
- 7. Reverend Albert Archer;
- 8. John Mills;
- 9. Jerry Page;
- 10. Winsome Maxwell; and
- 11. Simone Powell.

To: Michael S. Arif, Esquire
Craig S. Cooley, Esquire
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As a result of my forensic psychiatric evaluation, it is my opinion, to a reasonable degree of medical certainty, that on October 14, 2002, Lee Malvo was suffering from the following mental diseases:

1. Dissociative Disorder Not Otherwise Specified (DSM-IV-TR: 300.15);
2. Depressive Disorder Not Otherwise Specified (DSM-IV-TR: 311); and,
3. Conduct Disorder, Childhood Onset (DSM-IV-TR: 312.81).

It is my further opinion, to a reasonable degree of medical certainty, that on October 14, 2002, as a result of the above-noted mental diseases, Lee Malvo was severely impaired in his ability to distinguish right from wrong and was severely impaired in his ability to resist the impulse to commit the act.

Lee Malvo was born in Kingston, Jamaica on February 18, 1985, the only child of Una James and Leslie Malvo. He was described as a happy child until his mother separated from his father when Lee was five. Lee infrequently saw his father, who had been a loving and nurturing figure in his life, and was later mistreated by his mother's boyfriend. However, the most severe disruption in his young life occurred at the age of nine, when Una James placed him, for the first time, in the extended care of another person, while she sought employment on different islands. Lee had several different placements, some for over one year at a time, during which he was periodically neglected and physically and emotionally abused. He felt abandoned by his mother, as well as his father. He became clinically depressed (leading to my diagnosis of Depressive Disorder Not Otherwise Specified) as a result of the parental abandonments, frequent uprootings, changes in schools (he attended at least ten different schools), and abuse and neglect and at times threatened suicide. At times, he acted-out his anger and frustration in response to these traumas (leading to my diagnosis of Conduct Disorder, Childhood Onset). He learned to cope with these traumas by putting himself in trance-like states (i.e., dissociating) in order to psychologically remove himself from overwhelming pain and despair. Others noted his distress over his separations from his mother but described him as a bright, well-behaved, loving and obedient child, who was desperately searching for a stable, loving and nurturing parent.

Lee first met John Muhammad in October, 2000, when he was fifteen years old and living in Antigua. Lee had moved to Antigua with his mother in late 1999, although she left him alone to work in St. Maarten from March until August, 2000. Lee saw Muhammad playing on a flight simulator with his son and was immediately impressed by the care and attention he lavished on his child. Other children, including Lee, were drawn to Muhammad, who began teaching the children basic martial arts and buying them treats. Lee formally met Muhammad in November, 2000 when his mother purchased documents from Muhammad to attain her dream of coming to the United States. He witnessed Muhammad's relationship with his three children and viewed Muhammad as the ideal father. In December, 2000, after his mother abandoned him again to move to the United States, Lee

To: Michael S. Arif, Esquire
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moved in with Muhammad and his family and found the loving, caring and reliable parent that he never had and so desperately wanted.

Lee lived with Muhammad in Antigua from December, 2000 until coming to the United States in May, 2001, to ultimately reunite with his mother. During this time, Lee and Muhammad's father-son bond was cemented. Lee was the obedient oldest child who took care of his younger siblings. He converted to Islam, adopted Muhammad's American accent, began studying Muhammad's view of the plight of the Black man in America, lost interest in school, began rigorous physical training and began assisting Muhammad in his illegal activities. He viewed Muhammad as his father and teacher as he became Muhammad's obedient son.

Lee moved to Florida with Muhammad and his family in May, 2001 and shortly thereafter joined his mother in Fort Myers, Florida. Although deeply attached to Muhammad and his family, Lee's dream was to reunite with his mother, become a United States citizen, go to college and become a pilot and a productive member of society. He began Cypress Lake High School and was on his way to fulfilling his dream when he learned that in order to take the college entrance examinations, he would have to have a Social Security Number. He realized that in order to go to college, he would have to be a legal resident. He became distraught. His mother insisted that he get a high school diploma but forbid him from considering the military or any other route by which he could reach his dream. He continued to maintain telephone contact with Muhammad and decided that the easiest way to become a citizen was to be adopted. Muhammad, who had lost custody of his children, supported this plan. Lee's mother strongly objected, but blocked other paths to his becoming a legal resident. Lee left Florida in October, 2001 to join Muhammad in Washington State. Lee again saw his mother as failing him as a parent, while Muhammad was willing to take him in as his adopted son.

Lee arrived in Bellingham, Washington in October, 2001. He enrolled at Bellingham High School, lived with Muhammad at the Lighthouse Mission and began an intense relationship with Muhammad that Lee believed would ultimately result in his becoming a legal citizen, going to college and becoming a pilot. Muhammad introduced Lee as his son and after school they spent all of their time together. Muhammad began a rigorous program of physical conditioning, weapons and tactical training, honing various theft activities, as well as religious and political indoctrination focusing on the oppression of the Black man in America. Witnesses described Lee as a well-behaved and obedient son. Lee was ecstatic at uniting with the father who would help him reach his dream. He still planned to reunite with his mother after becoming a success in the United States.

Lee's plans for a successful future in America were dashed when his mother came to Washington State to reclaim him from Muhammad. In December, 2001, both Lee and his mother were arrested and detained by the I.N.S. as a result of their illegal status. Lee realized that his mother again ruined any chance he had of legally fulfilling his dream in America. The only person

To: Michael S. Arif, Esquire
Craig S. Cooley, Esquire
Re: Commonwealth v. Lee Boyd Malvo

who truly cared for him was Muhammad. Shortly after his release from confinement in January, 2002, Lee left his mother to join Muhammad.

Although the development of dissociative symptoms in response to the process of prolonged and intense coercive persuasion (i.e., Dissociative Disorder Not Otherwise Specified) had begun in earnest when Lee arrived in Washington State in October, 2001, the intensity of that indoctrination dramatically escalated by January, 2002. Lee utilized dissociative defenses to cope with overwhelming feelings of depression during his childhood. He was programmed by Muhammad to become adept at inducing trance-like states, lost his sense of identity and became totally dependent on and obedient to his all-knowing father. Muhammad dominated every aspect of Lee's life. He determined when, what and where he ate, how long and where he slept and what he did. Muhammad isolated Lee from others. Every activity involved a lesson. Muhammad escalated the indoctrination process with further weapons and martial arts training, physical conditioning and political indoctrination that involved extensive reading, discussion and even listening to recordings of Farrakhan, Malcolm X and selected passages from the Art of War and the Book of Slavery during his sleep. Through this intense process of coercive persuasion, Lee adopted Muhammad's belief system as his own. He became emotionally dependent on Muhammad, now in a foreign country with no one but Muhammad on whom to rely. Muhammad told Lee that his ultimate goal was to reunite with his children, who were wrongly taken from him by a corrupt and oppressive government. Lee was taught by Muhammad that right and wrong did not exist, that good and bad depended upon who benefitted and that the end justified the means. On traveling to different cities, Muhammad would point out slums and ghettos, inciting Lee's anger at the unfairness of the world, while teaching him to channel that anger to change the world as Muhammad wanted.

Lee was no longer a teenager from Jamaica with aspirations of becoming a success in America but a soldier in Muhammad's war to reunite his family and punish the government in the process. Although initially drawn to Muhammad out of his depression and the absence of a stable and loving parent, Lee was ultimately the victim of intense coercive persuasion that resulted in his losing his own sense of identity, becoming desensitized to an escalating pattern of violence and becoming totally dependent on and subservient to the dictates of Muhammad. Lee became a soldier in Muhammad's personal war on America. At the time of the offense, Lee Malvo was totally dominated in his thinking and behavior by John Muhammad.

To: Michael S. Arif, Esquire
Craig S. Cooley, Esquire
Re: Commonwealth v. Lee Boyd Malvo

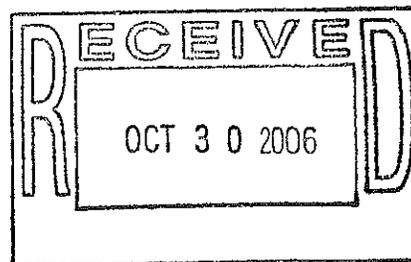
As a result of John Muhammad's prolonged and intense coercive persuasion, it is my opinion, to a reasonable degree of medical certainty, that on October 14, 2002, Lee Malvo was severely impaired in his ability to distinguish right from wrong and was severely impaired in his ability to resist the impulse to commit the act.

Respectfully submitted,

A handwritten signature in cursive script that reads "Neil Blumberg, M.D.".

Neil Blumberg, M.D., F.A.P.A.

NB:esp



October 25, 2006

Mr. William Brennan, Esq.
Mr. Timothy Sullivan, Esq.
Brennan, Sullivan & McKenna, LLP
5407 Water Street
Suite 105
Upper Marlboro, MD 20772

Re: State of Maryland vs. Lee Boyd Malvo

Dear Counselors:

Below is a pre-sentencing report on behalf of Lee Boyd Malvo. It is intended to be used to supplement the pre-sentencing report submitted by the state at the time of sentencing. The report is presented in an effort to assist the court in determining sentence, particularly as this relates to conditions of confinement. Foundational to the report is a brief social history review of Lee Malvo and the growth that this social worker has witnessed in Mr. Malvo since his conviction of Murder charges in Chesapeake in 2003.

Introduction

Lee Boyd Malvo is a twenty-one year-old Jamaican-born male who is currently incarcerated at the Montgomery County Correctional Facility where he awaits sentencing after pleading guilty to murder charges on October 10th, 2006. Previously, Mr. Malvo was convicted of capital murder in Virginia and was given a life sentence. Through interviews conducted with Mr. Malvo, as well as his social history investigation, it is my opinion that Mr. Malvo will benefit from a program of continued mental health treatment in keeping with his sentencing and incarceration.

Over the years since his trial in Chesapeake, Mr. Malvo, continues to have difficulty in comprehending and coping with the enormity of the crimes which he committed under the control of John Muhammad. "It happened so fast. It went from wanting to go to school to killing. How did it happen so fast? What inside of me could Muhammad use to make me do what I did?" Lee asks. He has expressed deep remorse for his actions and constantly ponders the fate of the families, especially of the children who have been traumatized by his actions. While this report is not offered as an excuse for his actions, it is hoped that they will be placed within the context of his life, and the extreme control that the older John Muhammad had over him at the time of the murders and other offenses.

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Social History

Lee Boyd Malvo was born on February 18, 1985, to Leslie Malvo and Una James at the Victoria Jubilee Hospital in Kingston, Jamaica. He was the only child from the union of his parents, but he had two half-siblings, Rohan and Tracy, born to his father. Lee is the only child born to his mother. In the first five years of his life, Lee enjoyed a happy childhood. He lived in a house with both parents. His father was a mason and his mother was a seamstress. They worked hard to provide for him and his father was saving towards buying a house for the family.

From early in his development, Lee was introduced to books and the ethic of academic study. His mother, Una, gave him books and building blocks as toys. In her zeal to initiate Lee into book learning, she sheltered him and discouraged normal childhood interactions. If Lee went outside to play with other boys his age, she would call him inside. She discouraged his participation in sports and encouraged him instead to find a book and read, or to do drawing. She backed up such encouragement with corporal punishment and a strict disciplinary code, which Lee said discouraged dissent.

Although Lee loved his mother and cultivated her desire for him to study, he developed a special bond with his father, Leslie. According to Lee, his father allowed him to be a child. This does not mean that Leslie did not also discipline him, but, as Lee explained, Leslie would balance discipline with nurture. It was Leslie who would take Lee out and buy him treats such as ice cream. It was Leslie who would sometimes intervene and override Una, telling her to "let the boy play." Lee loved both parents, but it was his father's presence that made him happy. The relationship with his mother, who has since been diagnosed with Bi-Polar disorder, was an inconsistent one. If she was in a good mood she would sit with him and teach him how to draw. However when his mother saw that he was becoming too skilled at drawing she tried to beat him out of it. She did not want him to be an artist; she wanted him to be a doctor. There was no such inconsistency with his father. Father and son had a great bond that was admired by many persons who knew them from the impoverished community where they lived in Oakland Gardens, Kingston. Lloyd Barrett, a neighbor who testified at the Virginia trial recalled that Leslie was a role model for him on how a father should interact with his son. For Lee, Leslie was patient and loving father who stood as a buffer between him and his mother's brimstone approach to parenting.

Lee recalled an incident very early in life when he played a broke a valued vase that belonged to his mother. He was only two and a half years old but he shivered with fear at the punishment that he expected to receive when his mother discovered that her porcelain vase was broken. His father told him not to worry. When his mother returned home and saw the broken vase she screamed for Lee; however it was his father who stepped to her and said "Leave the boy alone. I broke it. You'll buy another one next week." His father was his hero.

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Leslie wanted to provide a better environment for his son and also for Una. To that end he moved to a more residential area of Kingston and sent Lee to a private school where his academic abilities were encouraged. In his quest for a better life, Leslie was also going to Grand Cayman on a regular basis in order to work but the separation from Una was taking a toll on the relationship. Una has since admitted that she never loved or cared for Leslie and became involved with him only because she was pressured by her sister, and because she needed the financial assistance that he provided for her. Una found other love interests and she accused Leslie of being involved with another woman in Grand Cayman. The arguments led to physical altercations and Lee recalled his father punching his mother in her mouth. She took a cutlass and chopped him on his right hand. This was his first exposure to domestic violence. To punish Leslie, Una neglected Lee refusing to have anything to do with him or his father. She hated the fact that the boy showed preference to his father and would turn on the son to punish the father. Leslie did the housework, prepared his meals, gave him his bath, took him to and from school and helped him with his homework. According to Lee, "Those two weeks was the best period in my life."

In 1990, when Lee was only five years old, he was suddenly and unceremoniously separated from his father, Leslie. The separation came about while Leslie was working on a six-month contract in Grand Cayman. Shortly before Leslie returned to Jamaica, and without his knowledge, Una took Lee and went to an isolated, rural district called Endeavor. Leslie recalled the shock of returning home to an empty apartment and an empty bank account. He had added Una's name to his bank account and was sending money on a regular basis. Lee remembers the trips to the Western Union to collect the funds.

The separation from his father, and the manner in which it was executed, proved traumatic for Lee. His mother became romantically involved with another man who himself was abusive. There was no longer any balance. He was restricted and beaten and there was no one to save him. In interviews with his cousins, they recall the severity of the beatings that Lee was subjected to. Maintaining good grades was very important to Una. He recalled that there was a 3 -1 ratio for each incorrect answer that he got. There were three lashes with a leather belt for each incorrect answer. It was a daily routine for her to go through his book and see how many incorrect answers he got. If there was a total of eight wrong answers he received a total of 24 lashes. Nonetheless by the school's standard he was the brightest child in the class. His teachers recalled that he was an excellent student and a pleasure to work with. When he graduated from the Basic School in neighboring Brown's Town he was Student of the Year and the 'Head Boy.' Although he subjected himself to his mother's dictates and discipline, and by all accounts, was a studious and well-behaved boy, Lee never recovered emotionally from the separation from his father.

Leslie made attempts to find Lee and Una, and was finally able to locate them in the hills of Endeavor. Lee shared with his father the abuse that he was being subjected

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to, feeling confident that his father would put an end to it. Leslie begged Una to return to him. He promised that he would do everything in his power to make things right. Lee was hopeful that he could get his parents back together and went for a coconut and two straws which he hoped they would share as a symbol of togetherness. This was something that he had observed them doing in the past. However Leslie was sent back to Kingston with his empty hands and a promise that he could have Lee on holidays. Leslie left Lee with two flight jackets, one black and one silver, that he had brought from the Cayman Island. It was at that point that Lee had a desire to become a pilot.

After about a year and a half, Una moved back to Kingston with her boyfriend Noy Lawrence. From the remote hills of Endeavor, Lee was relocated to one of the most dangerous, violent, and politically charged areas in Kingston where he and his mother shared a room in a tenement yard. Living in this environment exposed Lee to daily gun battles between the rivaling gunmen and the police. One day on his way to school he was caught in between a shoot out involving gunmen and the police. Upon hearing gunfire Lee ran for cover. A police officer, seeing that Lee may be in danger, chased after him to get him out of the range of fire. But there was a trap set for the policeman that neither he nor Lee saw. As the cop approached Lee, Lee heard a shot and when he looked behind him he saw the police officer's head blown off.

Lee was dragged into safety by the killer, and when the coast was clear the killer lifted him out of where he hid him. The smile that the killer had on his face turned into a deadly smirk. As he patted Lee's leg with the revolver the killer said, "Hear no evil, see no evil and speak no evil." Although Lee was only six and a half years old he knew what that ominous threat meant. He was to say nothing to the authorities. However he told his mother and after witnessing several other incidents of violence, including the murder of a cousin, Una decided that she had to get a better life for herself and her son.

When Lee was nine years old, his mother left him with an acquaintance, Veronica, and her husband, Barry. This was to enable her to travel to St. Maarten, to find work. Initially, Lee understood the reason for his mother leaving him. However, what should have been a temporary separation by his mother eventually took on the air of permanence. From that moment on, Lee's life became a roller-coaster ride of separation, house movements, parental neglect, rejection and abandonment. He was beaten frequently by Barry who resented his presence in the home. Rather than being sent to school regularly he was forced to sell vegetables out of a push cart. If he objected or did not do as good a job as was expected of him he was brutalized. His mother heard of the abuse and sent for him. When Lee visited his mother in St. Maarten, he entertained hopes that he would be allowed to stay with her. But he was sent back to Jamaica alone and encountered further rejection, when his father said that he (Lee) could not stay with him either. Leslie has since explained that he could not keep Lee at the time, because he was still working in Grand Cayman for six months of the year, and there would have been no one left at his house to take care of Lee. In Lee's childhood and fragile mind, however, his father did not want him.

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At the direction of his mother, Lee returned alone to the isolated, rural district of Endeavor, St. Ann, to live with his aunt Marie. His mother also directed that he should tell school authorities that his father was dead. Lee therefore refrained from talking about his father and internalized his feelings of rejection. While Una encouraged Lee to think that his father had abandoned him, her own actions reinforced Lee's trauma. She would visit with Lee, periodically from St. Maarten. Those periodic visits were usually just long enough for her to enroll him in school, as well as to uproot him and stick him in the home of another friend, relative, or stranger.

Lee had stayed for various periods at approximately fifteen places since birth. Lee recalled that he would cry for his mother and that he was "being treated like a puss-kitten." The reference is to the way cats and their kittens are generally treated in Jamaica. Lee was speaking to his sense of abandonment and that, like a "puss-kitten," his life was worth nothing. Interestingly, Lee came to identify so much with being a worthless puss-kitten that he said he even started sleeping with a cat. When put in context, the revelation is startling, as generally children in Jamaica grow up seeing cats as wild and suspicious creatures that ought to be discouraged from entering the home. As such, while it is culturally normative for Jamaican children including Lee to grow up stoning cats, it is not culturally acceptable to sleep with cats. Lee felt so abandoned that he also cried and wrote to his mother that he felt like committing suicide. Lee said that, when he cried or complained his mother would visit, but those visits gave him little reassurance. He said that such visits generally resulted in her moving him again, and then she would depart suddenly.

What was traumatic about these upheavals that Lee was subjected to was the fact that, after each one, his mother yet again abandoned him. He was also subjected to further rejection by his father. At one stage he was deposited at a boarding house but after a while his mother failed to send the boarding fees. This led to frustrations for Lee who began to do poorly in his school work. He made a second attempt to get his father to take him. He recalled that he traveled to Kingston, a three hour ride by bus to see his father and beg him to take him. He neglected, was not being fed well, and he was also failing in school. His father gave him a couple hundred dollars, but turned him down. He remembered crying all the way back home, only to be chastised for coming home late.

Education & Obedience to Authority

Because of Lee's many moves he attended several schools. Despite these moves Lee tended to perform admirably in the schools he attended. For Lee, his education was the one thing his mother seemed to care about during their separation. When Lee did well in school, he won his mother's approval. He also learnt that when he was not doing well in school, his mother would visit him to find out what was distracting him from his studies.

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For the most part, Lee was seen as a student with plenty of academic potential. At York Castle High School, his teachers as well as the principal remembered him. His English teacher Ms. Winsome Maxwell remembered Lee as a friendly child, but she also saw sadness in him attributed to parental separation. Ms. Maxwell as well as other teachers, believed that if Lee was able to become more settled and focused he would consistently excel.

There is nothing in Lee's Jamaican school records, or reports from teachers, that paints him as violent, disruptive or disrespectful. The teachers who have taught him, as well as relatives and acquaintances with whom Lee stayed, have testified to his obedience. Lee was not one to challenge or go against authority, whether that authority was a parent, guardian or a teacher.

Nevertheless, Lee did have problems that affected his education. In his first year at York Castle High, bullies victimized him. As a result, Lee was taken to live with his cousin Simone Powell and transferred to Spaulding High School. He stayed at Spaulding High School for one term, where he received excellent grades -- As and Bs. The fact that Lee felt at home with Simone, who also helped him with his schoolwork, facilitated his excellent performance.

At Spaulding High School, Lee also formed a close relationship with the Text Book Coordinator, Althea Wilson. Mrs. Wilson recalled that Lee volunteered to assist her with the issuing and cataloguing of books. She said that Lee would come to her assistance after his classes were over and while he waited for his cousin Simone. After Una removed Lee from Simone's house, she reenrolled him in York Castle High School. There he continued to do well, but lacking emotional support, his scores were not as high as at Spaulding.

According to Onyeka Nevin's, his best friend at York Castle, Lee appeared jovial and happy on the outside, but he (Onyeka) could discern the sorrow beneath the façade. Onyeka, who is now at Medical School at the University of the West Indies, said that Lee had times when he was very quiet and alone. Furthermore, Lee would bemoan the fact that his mother was in Antigua. Onyeka said that Lee wanted to go to his mother in Antigua and not return, but he noticed that Lee never mentioned his father.

Onyeka said that he was impressed with Lee as a student. He said that although Lee was hurting emotionally, Lee maintained a positive attitude towards school. When Lee did his homework, it was always very well prepared and presented. He recalled that what was so outstanding about Lee was that Lee would go above and beyond what was required. He remembered that Lee would do extra research and would cheerfully share with the other students and provide help and explanation when asked. He added that Lee had a lot to contribute to the class and, while Lee could get everyone to laugh, Lee was not a class clown.

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The other thing that stood out for Onyeka about his friend, Lee was his desire to give his life to Christ. He remembered an occasion when Lee was attacked by two older boys who wanted to play cricket but would not wait their turn to get the bat. Onyeka recalled Lee walking away from the confrontation saying that he was contemplating getting baptized. His pastor, Rev. Lorenzo King recalled Lee approaching him some months before he left the island, asking to be baptized. Lee had been raised in the Seventh Day Adventist Faith, and Rev. King remembered asking Lee if he was sure that this was something that he wanted to do and not something that he was doing because his elders expected it of him. "He told me that this was what he wanted and I felt confident that he was ready to turn his life over to Christ," Rev. King recalled.

There were two instances when Lee found stability. Once was with a cousin Simone Powell, referred to earlier, who had been asked to keep Lee after he had been abused by some older boys. Simone was a then recent graduate of teacher's college but she took an immediate maternal liking to Lee. Upon learning of the victimization that he suffered at York Castle, she gladly took him into her home. She became the mother that Lee never had. Lee said that he had felt he had found a caregiver and a home with his cousin. He flourished during the time that she was with him. She treated him kindly and set parameters that encouraged growth. Even though Una failed to send money for his upkeep, she took care of him, sharing what she could from the measly teacher's salary that she earned. However after less than year of stability with Simone Powell, Una returned to Jamaica for Lee.

Simone recalled the terror that engulfed Lee when he heard the knock on the door and recognized his mother's voice. "Please don't let her take me" Simone recalled him crying. She could not understand this fear and sought to reassure him. But Lee knew differently. Una took him with her that night and beat him so ferociously that he had welts all over his body. She made him promise that he would denounce Simone Powell and demanded that he never ally with anyone against her. To this day, Simone is still troubled by the change she saw in Lee when he returned to the home they shared and cursed her at the urging of his mother. Lee has since said that this was one of the hardest things he ever did. Lee said that his mother tended to get jealous if she suspected that he was getting attached to any woman except her.

Lee's childhood depression became so severe at one time that he tried to kill himself. He became tired of his mother's ranting. She had been deported from St. Maarten where she had been living for some months. She returned to Jamaica where she displaced her frustration on Lee. He was made to feel he was the source of everything bad that had happened to her. She wished that he was never born and he would amount to nothing. One day he got tired of the constant barrage of abuse and took a rope and went to hang himself. He made the noose and placed it around his neck then called out to his mother to let her know she would have her wish. Unknown to him however, a neighbor had seen when he climbed in the tree and placed the noose around his neck. This neighbor, Blacka, was just in time to catch Lee as he jumped. There was trauma to his neck and

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eyes, and though he survived physically he has never recovered emotionally. Unfortunately, Lee did not receive any mental health intervention. Instead, two days after his suicide attempt, his mother, angered by Lee's acting out behavior, invited him to attempt suicide once more.

There was another home in which Lee was invited and where he made progress. That was in the home of his teacher, Winsome Maxwell. She was Lee's home room teacher and she said she saw signs of neglect and sadness in her student and asked her parents to take him into their home. Mr. Maxwell, Ms. Maxwell's father stated that Lee became the son he and his wife never had. They showered him with love and he flourished. He remembered that he had his own plot of land on Mr. Maxwell's farm where he grew his vegetables on the week ends. "It was a good feeling watching the plants grow." He began to put more effort in his school work and was able to get better grades. "At last the future was looking bright. I had been placed in all the classes I needed to pursue a career as an aviator," he remarked. However, less than a year later his mother took him away from the Maxwell's home.

Antigua Brings Disappointment & Despair

Lee recalled that at first he was happy when his mother decided to take him with her to Antigua. He was hoping that he would finally have some stability. Unfortunately, the circumstances under which Una took Lee with her seemed to have less to do with providing Lee with a happy home, and more to do with her trying to protect her interest. According to Lee, his mother was jealous of his friendship with one of his female schoolmates, named Kedian. Lee was fourteen years old at the time and he had an attraction to Kedian. Lee said that there was no sexual intimacy in the relationship, and he liked Kedian because she was quiet and had nice ways. However, Lee recalled, when his mother found out about his friendship with Kedian, she (his mother) "gave me an ass whupping." Lee said that his mother had saved up all the receipts for money she spent on him, including his education, and that she warned him that no woman would reap the reward from her efforts. Shortly after finding out about his friendship with Kedian she had him sent to join her in Antigua.

It was in 1999 that Lee joined his mother in Antigua. He was fourteen years old and he joined her with anticipation and trepidation. At the time his mother was living in a one room shack with no bathroom facilities. It was a far cry from the Maxwell's home where he had his own room. At the time that he joined his mother she was working as a house cleaner for a prominent attorney on the island as well as working as a vendor on one of the main highways in the capital of St. John. Una was able to enroll Lee in one of the best private schools on the Island. It is run by the Seventh Day Adventist Church which was in keeping with Lee's Christian beliefs. Una was able to obtain the funds for his tuition from Theodore Williams, a man with whom she was romantically involved.

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Within three to four months of bringing Lee to Antigua, Una left him again and went to St. Maarten. This was an extremely trying period for Lee and where his resolve to be the good obedient student was truly tested. In an interview with Elmore Martin, the owner of the room that Una shared with Lee, he said that it was not more than three to four months that Lee was left alone in the room. He said that at first he was not aware of the fact that Una was gone. However after the second month of not receiving rent, Lee told him that his mother was off the island. Mr. Martin said that he would not put out Lee on the streets because he was still a minor. However he disconnected the electricity because he could not see having to pay for electricity when he was not collecting rent. Mr. Martin said that there were many nights when he reflected on whether he may have contributed to the tragedy of Lee's downfall by acting more like a landlord rather than as a Christian who should have been mentoring the kid.

Lee recalled that period when he was left on his own in Antigua as a very difficult one. He recalled that he had to do his home work while sitting under a street lamp for light. Nonetheless he did well. In interviews with his teachers, they recall Lee as a hardworking student who attended class regularly and did well. No one knew the hardships that he suffered. His meals were limited to lentil beans and dumplings with sugar and water as his drink. His best friend in Antigua, John Sewsankar, currently at Oxford, remarked that Lee always had such a positive attitude that he could never have imagined that he was destitute and living by himself. Lee admitted that he was able to purchase a second hand computer with money he had saved, and was also able to buy a zip drive and a burner. With that he was able to make copies of CD's that he stole and sold at a reduced price.

His mother eventually sent for him to join her in St. Maarten as she was in the process of trying to get to the United States by boat. She had paid money to a trafficker, but after it became obvious that this person had neither the ways nor the means to get her to the United States she decided to return to Antigua. She was able to get Theodore to get her better living accommodations and she began to strategize her next move which she hoped would take her to the United States.

It was after returning to Antigua that Lee met John Muhammad. He was with his son at an electronics shop and Lee was mesmerized by the camaraderie that he observed between father and son. It was something that he longed for but which seemed out of his reach. He would visit the shop just to see and absorb the father/son bonding that existed between Muhammad and his son.

John Muhammad had the charisma that made people, adults and children flock to him. In interviews that were conducted with neighbors and associates who knew Mr. Muhammad while he lived in Antigua; they commented on how impressed they were by him and the devotion that he showed his children as well as all children that came into contact with him. Lee was impressed no less, and he longed for that bonding that he saw between Muhammad and his son.

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Una learned that Muhammad was able to sell her passage to the United States. Within a month of learning this she was able to get the needed funds from Theodore and pay Muhammad for the fraudulent passport and passage to the United States. Once again she left Lee on his own. This was in December of 2000. Lee was 15 years old at the time. Shortly after she left, Lee became very ill. He recalled that he was too ill to even rise out of bed to get help. He was in bed for two days with a very high fever. Muhammad who by then had grown accustomed to having Lee stop by his home, became concerned when he did not see him. Muhammad went to Lee's home and saw him gravely ill. Muhammad took Lee and nursed him back to health. After this Lee and Muhammad were inseparable. He was like the guru and Lee his faithful disciple. He began to spend so much time with Muhammad that he eventually asked to live with Muhammad. This marked the beginning of the end for Lee Boyd Malvo, the young man who left Jamaica with dreams of studying Aeronautical engineering and becoming a pilot.

As Lee recalls it, Mr. Muhammad was the perfect father. The shabby clothes that he had were replaced by clothes which Muhammad bought him. His Christian faith was also being replaced by the teachings of Elijah Muhammad. Lee recalled that he was introduced to numerous books emphasizing white imperialism and black oppression. Within weeks of joining Muhammad, Lee began to change. Principal of the 7th Day Adventist High School, Dr. Aaron, as well as teacher Ms. Cheryl Morris, said that they noticed a change in Lee. The usually conformist Lee began to show some defiance. Dr. Aaron and Ms. Morris noted that Lee refused to participate in worship, and that he wanted to spread his newly found Islamic faith in the Christian school.

After Muhammad was detained by the Antiguan Authorities, Lee started to miss school so that he could look after Muhammad's children. It was in Antigua that Muhammad began to introduce Lee as his son, and Lee first called himself John Lee Muhammad. As Lee reflected on his journey with Muhammad, he said that the point at which Muhammad won his loyalty and devotion was when Muhammad told him, "Good job son." This was after Lee had completed a task that Muhammad had given him. He had never before heard those words from his mother no matter how well he did.

Move to The United States

In May of 2001, Lee, traveling as Muhammad's son entered the United States of America illegally and after a brief stint with his mother in Florida he traveled to the state of Washington join John Muhammad. Muhammad had informed Lee that the authorities had taken his children and he needed Lee to help him regain them. He also promised Lee that he would formally adopt him so that he could go to college and realize his dreams of becoming a pilot. Against his mother's wishes, he traveled by Greyhound Bus and joined Muhammad in Washington where they both resided in a shelter. Una's hold on Lee had finally broken. In the past she would leave him only to uproot him as she saw

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fit. This time however Lee was determined that she would not take him from the arms of the man whom he saw as his father. She reportedly traveled to Washington and informed the authorities that her son was under the control of Muhammad. Though Lee and his mother were detained by immigration authorities, Muhammad was still able to get a hold of Lee upon his release.

The Brainwashing

The level of brainwashing to which Lee was subjected was aimed at expunging Lee's past, personality, and his dovish Christian beliefs, and, in effect, wash his brain with Muhammad's "truth." For almost two years, including time in Antigua, Lee was systematically exposed to Muhammad's indoctrination and training. Before Lee accompanied Muhammad on the murderous rampage, Lee first had to kill himself psychologically. He had to get rid of the innocence that defined his being, and the compassion for others that was part of his life. Lee recalled that Muhammad would take him to the shooting range for practice and would tell him to project his own image as the target. According to Lee the first time he shot someone, the face that looked back at him was his own. It was important for Muhammad to ensure that he had erased from Lee his entire identity as an innocent Jamaican child, and to assume Muhammad's identity.

Muhammad controlled everything that Lee did. Muhammad decided what Lee ate and when he ate. He decided where Lee went, with whom Lee associated and imposed limits on that association. Muhammad decided when Lee should sleep and how he should sleep. He made him fall asleep to taped excerpts from the Art of War. He had him watch the Matrix about 100 times, until Lee saw himself as Neo and Muhammad as Morpheus. Neo was entrusted with saving the world. Muhammad had Lee watch Roots and other films that exposed racism. Lee was given a constant dose of anti-white and anti-American rhetoric. Muhammad had Lee believing that in order to save the world there must be sacrifices. He also had Lee believing that he, Muhammad, was going to establish a utopian society of 70 boys and 70 girls who were going to bring about a just world. At the time of the shootings, Lee believed that this was his holy mission.

Lee's Intelligence

Much has been made of the issue of intelligence, particularly as this applies to Lee. It is clear that he regurgitated whatever he read or was told by Mr. Muhammad, but he showed very little by way of critical thinking. This might be due to two factors. The first could be that under Muhammad's control, his intellectual functioning had not yet realized that stage of critical learning. The second factor could be that his critical thinking abilities had been suppressed by a learned culture of obedience and subservience to authority, whoever and whatever that authority might be.

Lee's intellectual abilities are not disputed. However as an adolescent, his ability to read and articulate could not save him from the influence and sway of the experienced

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and worldly-wise John Muhammad. Indeed, Lee had enough intellectual curiosity, coupled with desperation for acceptance, to fit Mr. Muhammad's purpose. When Lee left his mother in Florida to go and stay with Muhammad, Lee said he had three goals in mind. These goals were all integrated and, for Lee, they were integral to his being with Muhammad. The goals were to get adopted, to become a citizen, and to go to college. It was Lee's understanding that Muhammad identified with these goals. Lee thought that Muhammad was willing to facilitate the academic and personal ambitions he had shared with Muhammad.

Lee was so intellectually immature and emotionally vulnerable that he could not dissociate himself from Muhammad when he needed to. Lee was fifteen years old, when he first met Muhammad. He was a good, promising student, but at the time Lee was certainly no match intellectually or intelligence-wise for Muhammad. He accepted Muhammad's philosophies and doctrines uncritically, lacking both the intelligence and the will to rebut. Emotionally, and even physically, Lee saw himself as a little island boy looking up into the face of a big, respectable and authoritarian sounding U.S. Army veteran of the Gulf war. Muhammad was also accepting of Lee, and Lee was a boy looking for a father and a mentor. In Muhammad, he saw someone who would accept and protect him, rather than abandon him. Muhammad, with his three kids beside him, presented himself as both a father and mentor. Throughout his time with Muhammad, Lee saw himself as a "child under Mr. Muhammad's tutelage." Lee also said he so believed and trusted Muhammad, that if Muhammad "ordered" him to kill himself he would have done it. He professed that he feared disappointing Mr. Muhammad, because he feared losing Mr. Muhammad's acceptance and approval.

It would be a mistake to judge Lee's intelligence merely on his ability to absorb information and reproduce it. That ability was enough to get him good grades in high school, but in the real world, particularly the realm of people like Muhammad, Lee became like clay in a potter's hands. Lee recalls that in Antigua Muhammad had expressed interest in another boy, about his age. Muhammad, Lee said, talked about taking the boy with him to the United States, because the boy was bright in school. Fortunately for that boy, as bright as he was, he had parents who were wiser and not flattered by Muhammad's interest. Lee, however, had no one, and at an age when he needed guidance and supervision, he was left alone with Muhammad.

In a 1998--1999 report at York Castle High School, Lee's class teacher wrote that Lee was a "well-behaved boy, who was always willing to carry out given tasks." The comment illustrates what Muhammad found attractive about Lee. That is Lee's willingness, or his instincts for obedience to authority in executing a "given task." On the same school report, the year supervisor commented that Lee should be encouraged not to waste his potential. Unfortunately, the vulnerable Lee met a man who, rather than honor that learning potential in the young Lee, sought to exploit it for his own ends.

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Lee's association with Muhammad, which led to the offenses for which he has pled guilty, has had a severe emotional and psychological impact on his development. In the initial interviews with Lee, what jumped out was the way in which he had assumed the identity of John Muhammad. Lee did not want to be called by his right name, but insisted on being called John Lee Muhammad. In the interviews he spoke not like a Jamaican child, but in the accent and tone of a senior African American male who had lived through racial segregation and oppression. He recited, it seemed verbatim; things Mr. Muhammad told him or coached him to say, and when challenged, Lee would declare that he (Lee) and Mr. Muhammad are one. He insisted from the first interview that Mr. Muhammad was "my father." Initially, he saw his attorneys as enemies or extensions of the oppressive system trying to execute his "father," Muhammad. Lee seemed prepared to sacrifice himself for Mr. Muhammad, as a way of proving that Mr. Muhammad's vision of the world was right. In speaking to Lee, it was clear that the "reality" of which he spoke was not that of a Jamaican seventeen year-old, but rather the regurgitated philosophies of the then forty-two year-old African American, John Muhammad.

Detaching From Muhammad

The process of 'Cognitive Reframing,' which is used with victims of brainwashing, has been instrumental in reintroducing Lee to his own history, which seemed to have succumbed to Muhammad's. This approach resulted in enough improvement in Lee's interaction to get him to start cooperating with his legal team, so that his attorneys would be in a position to prepare his defense for his first trial. At the outset Lee's devotion to Muhammad was phenomenal. When asked what was it about Mr. Muhammad that engendered such loyalty, he said "My dad gave me consistency, one hundred percent unconditional acceptance and he led by example." This worker recognized that she had gain Lee's trust, and this could not be accomplished by challenging his devotion to Muhammad. It was important to join him in defense of his father until an alternative to Mr. Muhammad had been provided. That came about when this worker met with his biological father in Jamaica and taped his voice and brought it back to Lee. It was the first time that Lee was hearing his father's voice in years. His father talked about the good times that he and Lee shared before Lee was taken away from him. Lee smiled as he heard his father, in heavily accented Jamaican patois, recall the good times.

When Mr. Malvo spoke of the turn of events in his son's life you could hear the anger mixed with tears as he asserted that it was John Muhammad who destroyed his son. When Lee was informed of the anger that Leslie Malvo displayed and that, if given the opportunity, he would strangle John Muhammad for ruining Lee. Lee looked to the worker with tears in his eyes and said "He probably would." In that instance, Lee was given an alternative to Muhammad. He was given the hero father that he had been searching for since he was five years old. The father whom he wanted to save him from

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the abuse at the hands of his mother, her paramours, and the many persons she left him with. He was, for a moment, the lost child being defended and protected by his father.

Hearing the voice of his biological father marked the turning point in the process of separating Lee from John Allen Muhammad. This worker became emboldened in asserting that she would address Lee in his given name rather than as John Lee Muhammad. From the outset, this worker insisted on speaking to Lee in their native Jamaican patois, and it was heartening to hear Lee respond in patois after listening to his father. Upon recognizing the improvement that had been made from hearing his father's voice it was decided that bringing someone from Lee's past to meet with and interact with him would make much progress in further detaching him from Muhammad. It was decided that Winsome Maxwell, his teacher from Jamaica, who once took him into her home, was the most suited person.

It was on Memorial Day weekend in 2003, that Lee saw his former teacher for the first time since she had put him on a plane and sent him to join his mother in Antigua. Ms. Maxwell had been battling feelings of guilt ever since Lee's predicament. She wondered if she should have defied his mother's wishes. She is haunted by the look on Lee's face as his eyes asked her if going to Antigua was in his best interests. "What could I have done? She was his mother and she wanted him."

Upon enquiring of his former class mates and how they were doing Lee asked his teacher; "How did this happen? What am I doing here?" "This is what we are here to find out Lee?" she responded. Ms. Maxwell, along with this worker was with Lee for a total of three days. On the first day he was Lee Malvo, her beloved student, anxious to hear about what was happening in the lives of his classmates and reminiscent of the days that he was in her home and treated like a brother. The following day he was John Lee Muhammad, spewing racial hate and regurgitating the doctrine that John Muhammad had so successfully imbued in him. "What could have brought about the change?" Ms. Maxwell and this worker both wanted to know.

Lee informed us that the nights were the hardest for him because it was then that he would hear the tapes by which he fell asleep while with Muhammad. He said that it was as if the tapes were still playing in his head at nights. "His voice was in my head," Lee recalled. *'They are trying to turn you against me. Your word is your bond. You are your greatest asset. Right now you are your greatest enemy. Are you willing to do whatever it takes? Are you willing to die for what you believe? We must become one;'* Muhammad kept telling him.

His loyalty to Muhammad and the assertion that he gave Muhammad his word, and his "word is his bond" was challenged by Ms. Maxwell. As she broke down in tears she asked Lee, "To whom do you owe loyalty? The man who brought you here, or me who took you into my home as my child and brother? Tell me who do you owe your loyalty to?" It was clear that this plea from his teacher made quite an impression on him.

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He promised cooperating with his attorney and to reveal to them the things that he went through while under the control of John Allen Muhammad.

Low self esteem was one reason that Lee gave why he was vulnerable to succumbing to John Muhammad's control. "I had no one. Nobody cared what happened to me." He remarked. It was therefore important that a positive sense of self be reinforced by emphasizing his strengths rather than his weaknesses. Lee's progress has been gradual, and there were times especially in 2004 when it was noticeable that Lee would show signs of regression (back into his Muhammad identity.) The emotional conflict stemming from his childhood has been ongoing and is reflected in his writings. It was of great concern to this worker that Lee be sentenced to a facility where he could be availed of Mental health services. This was the not the case until he was transferred to the Montgomery County Correctional Facility. Since then he has made good progress.

However, while there has been improvement in Lee's mental state he still remains psychologically fragile. At age twenty one, he is not far removed from his childhood problems or from the traumatic events associated with his relationship with Muhammad. Failure to confront these events and trauma, within a clinical mental health structure, could very likely lead to Lee presenting with a range of disorders while incarcerated. Concomitant to the need for mental health intervention is that Lee, at age twenty one, still has the bulk of his life ahead of him. As seen through Lee's testimony on behalf of the state, his is a life that can still amount to some good, even behind bars.

There are three factors that should help in determining that Lee would benefit from psychiatric/psychological therapy.

- **Ability to Improve with Professional Guidance and Structure**
Within the limited parameters of social history investigation, which defined my work with Lee, he showed signs of improvement in his demeanor and outlook. There was a pessimism and paranoia -- the world was out to get him -- which characterized his demeanor and vision in early meetings. Initially, Lee had shown little interest in even pursuing a high school equivalency diploma while incarcerated. He gave the impression that he had turned his back on the very notion of involving himself in the education offered to him by "the system." Muhammad had become not only Lee's "father" but also his teacher, and Muhammad had inculcated in Lee the notion that the system, with its education, was evil and detrimental to the black man. During the time Lee lived with Muhammad, day in and day out, Lee read the books Muhammad wanted him to read and learned the experiences Muhammad wanted him to experience.

Traits of that pessimism and paranoia have been replaced with hope and a determination to reclaim the path he had set for himself but which was hijacked by John Muhammad. He began that renewed journey when he was

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able to complete his High School Diploma through correspondence at American School in Lansing, Illinois. He was determined to get a high school diploma and not a GED and earned his diploma in December 2004. [See attached].

As if to illustrate the positive impact that even his minimal contacts with mental health professionals have had on him, Lee has expressed an interest in the study of psychology. Accordingly, he was recently accepted into a degree program at California Coast University to pursue his Associate Degree in Psychology. [See attached letter of acceptance] In a recent letter to this worker Lee stated that with the prospect of spending the remainder of his life behind bars, he hopes that in pursuing higher education particularly in the field of psychology, he hopes to gain an understanding of how he got to this point in his life. With that knowledge he hopes to be "a pen in the public consciousness" through what he does best, which is to write. In so doing he hopes that other Lee Boyd Malvos that are out there will not go down the path of destruction along which he was led.

Since his incarceration at the Montgomery Correctional facility, Lee has shown that, with increased and sustained contact with someone who had a professional understanding, he could improve his demeanor and respond to positive guidance. In the three years since his last trial, there has been significant overall improvement. His early drawings depicted themes of anger, rage and revolution. His most recent drawings, sent to members of staff at CVA, depict mixed themes of sadness, reflection and optimism.

- **The Importance of Continued Mental Health to Lee's Well-Being**

Prior to trial, Lee was diagnosed with dissociative disorder. It is clear that Lee also suffered from Childhood Depression, and continues to be depressed. While not formally diagnosed, Lee might have some traits of Bi-polar disorder. His mother has been diagnosed with Bi-polar disorder and his maternal grandmother had spent many years in the Bellevue Asylum in Jamaica. There is a history of mental disorder in his family. There are other concerns such as susceptibility to post traumatic stress syndrome. Lee's problems have serious implications for his adjustment behind the prison walls. This observation is reasonable and understandable based on two actualities of Lee's incarceration.

The first actuality is that Lee's words and actions are demonstrative of trauma resulting from events in his childhood and, more significantly, his association with Muhammad including the shootings. Under Muhammad's influence, Lee's emotional conflicts -- particularly having to do with his abandonment -- were displaced and channeled into a paranoid and adversarial view of the

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world. Under Muhammad, Lee's personality was introverted and inverted. Muhammad had Lee believing that he (Lee) was a chosen, but oppressed underdog, who was fighting for a great and just cause of liberation. Prior to his prolonged association with Muhammad, Lee generally respected authority-figures and was not defiant, adversarial or confrontational. As a child, he had a few problems with one or two guardians who were abusive to him. But his reaction, while childish (such as refusing to wash dishes), was not confrontational, abusive or violent. When Lee met Muhammad, he craved adult (particularly parental) acceptance and approval. However, Muhammad seized upon Lee's desperation and effectively became the sole authority in Lee's life, thus the only one to whom Lee should have had allegiance. Concurrently, Lee's orientation and personality was refashioned from that of a dove to that of a hawk engaged in war against the system.

The problem for Lee is that despite recognizing what his association with Muhammad has wrought, he is having a difficult time making sense of his own vulnerability, gullibility and culpability. Following his recent testimony against Muhammad, Lee had tremendous difficulty comprehending how Muhammad could have led him on a path of murder and destruction. "He is only a man" Lee asserted. "I feel stupid that I could have allowed myself to make him do this to me." He acknowledges his role in the murders for which he has pled guilty and bemoans the great loss to the victims. But he struggles with issues of his own identity and guilt, not knowing if the sniper was Lee Boyd Malvo (the promising student who was supposed to go to college), or John Lee Muhammad ("son" and loyal sidekick of Muhammad), or both.

The second actuality of Lee's incarceration is that he will be confronted with a culture and environment for which he was not prepared. Despite the four years that he has spent behind bars, Lee is still an adolescent emotionally, and while he may be book smart, he lacks social smarts. Lee presents as shy, and immature (even childish) in his disposition and interaction. Lee's exposure to the United States, except for a brief period with his mother, has been dictated by his association with Muhammad. For the approximately one year he spent in the United States prior to incarceration, Lee's exposure has been limited to living in a shelter with Muhammad, and to being on the road with Muhammad. Despite the enormity of Lee's offenses, he is as socially limited and vulnerable now as he was under Muhammad. So far, Lee has been kept isolated from the jail population, a factor that does not necessarily shield him from his inner conflicts. But given his age and limited experience, greater exposure to the inmate population could make Lee susceptible to grave psychological harm.

It is noteworthy that Lee has had no institutional infractions. This does not take away from the fact that as a first time offender among hardened repeat

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offenders, whatever psychological problems he has could become magnified, and may even take on life-threatening proportions. Despite the traumatic changes to Lee's life, particularly in his association with Muhammad, he had not been afforded sustained clinical treatment until he was detained at the MCCF. The progress that he made confirms that Lee's case calls for clinical attention to be concurrent with sentencing.

- **Lee's Desire for Mental Health Therapy**

In the Jamaican socio-culture that Lee came from, there is a strong stigma associated with mental illness or disorder. There is a compelling reluctance to admit to such disorder or even to entertain the notion of needing treatment or therapy. Given this cultural constraint, it was difficult for Lee to cooperate even with the mental health experts on the defense team. It has proven difficult for Lee to fathom the fact of his own emotional and mental dysfunction. Nevertheless, Lee has reached a point whereby he has seen wherein a program of therapy has been and can be beneficial to him.

Remorse

It was in early March of this year when, on a visit, Lee stated that he wanted to testify against Mr. Muhammad. There was a sense of urgency as he requested this worker inform his attorneys of his desire to testify. When his attorneys did not respond in a timely manner in seeing him he wrote to the District Attorney and told her of his desire to testify against Muhammad. "I need to do this for myself and for the victims," he said at the time when he was asked why he wanted to testify against Muhammad. This decision capped a period of deep remorse that Lee has been experiencing for the past two years.

At the time of his arrest, and even through the first trial Lee was devoid of feelings. He had successfully compartmentalized his actions and was thus unable to feel for his victims. A major part of the indoctrination process was the desensitization that Lee was subjected to by Muhammad, a process that was needed to enable Lee to carry out the murderous acts that Muhammad directed him to do. It was not until he was watching a seminar 'Inside the Criminal Mind' by Dr. Stanton Samenow, that he began to recognize the effects of his actions on the victims. He agonizes over the pain that he had wrought. He laments the lives that have been destroyed and cries for the children who lost their parents because of his actions. He ponders on how he can repay society for what he has taken away from it, and hopes to make restitution.

Mental Health Summary

Dr. Denese Shervington, MD, forensic psychiatric and Director of Psychiatry at Harlem Hospital in New York had the following to say:

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“The culmination of years of severe emotional and physical deprivation rendered Lee vulnerable to John Muhammad’s brainwashing. Lee soon thereafter plunged into a psychotic dissociation, assuming the persona of the rage-filled self that Muhammad projected into Lee. Lee, who had previously tried to kill his old self, one that was plagued with self-hatred and blame for not being lovable enough to have his parents hold, guide and protect him, welcomed his new persona. Psychotic and dissociated from a hopeless, invisible and despairing self, 15 year old Lee was able to delude his self that he now had value, worth and most of all, someone who was loved by a father.

Post Lee’s arrest and admission of guilt, and beginning with the cognitive reframing that was used to restore Lee to his true identity and himself, and culminating with his current therapy while in jail, Lee has made significant progress in regaining his sanity. In Lee’s own words, *“I am now forced to face myself and see that this is the culmination of walking blind for 14 years. I ask myself, what in me made me a murderer? I now am dealing with guilt, anger, anguish, embarrassment and shame. I want to use my life to help others.”*

Diagnostic Impression:

H/O Bipolar Disorder with psychotic features – Evidenced by Mental Status Exam 10/24/06 which revealed grandiosity, mood swings (depressed to elated), pressured speech, together with a history of insomnia, irritability and hallucinations. Of note, Lee’s mother and grandmother both suffer from Bipolar Disorder.

Prognosis:

In spite of the tremendous societal tragedy that occurred during Lee’s psychotic decompensation, with the mental health intervention that Lee has received, he currently exhibits evidence of remission and tremendous remorse for his wrong doings. With ongoing treatment, Lee offers tremendous potential for helping to prevent similarly abused and abandoned youth from going down his same path. Society would therefore benefit from ongoing mental health treatment for Lee, as such would help to transform this tragedy into violence prevention

Conclusion

According to a popular saying, "A mind is a terrible thing to waste." Lee’s mind should not be allowed to become a wasteland of pessimism and paranoia. There is evidence, based on this investigation and his education records, to indicate that Lee was seen as someone with good behavior and academic potential. Despite his childhood problems, Lee was seen as someone who would grow up to make a positive contribution to society. He was seen as being in the same league as his high school friend, Onyeka Nevins, who is currently studying medicine, or John Sewsankar who is at Oxford.

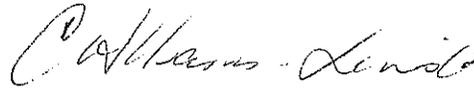
Today, Lee does not want his legacy to be merely "the sniper." He has successfully detangled himself from Muhammad's psychological hold, and was thus able

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to publicly denounce Muhammad and his teachings and to side with the victims when he took the stand in June of this year. John Lee Muhammad, the creation of Muhammad is dead, and Lee Boyd Malvo has been resurrected. He is determined to reclaim the path that was hijacked by Muhammad, and though Lee realizes that he faces the prospect of spending the rest of his life in prison, he believes that he owes it to his teachers, his friends, society, and most significantly to those who have been tragically affected by his actions, to make amends.

Lee considers amends to include availing himself of avenues for rehabilitation and restitution. He believes that it is incumbent upon him to still make a positive and worthwhile contribution within the confines of incarceration, and if possible within society someday. His willingness to contribute is why he wants to reclaim that potential with which he was endowed as a child. That is why he desires to renew his mind by revisiting his ambitions of a college degree. He has begun that road of healing and renewal and he hopes that his testimony and acknowledgement of his wrongful deeds have provided a measure of healing for the victims. As Lee faces his punishment, let there also be hope of renewal, even within the walls of incarceration, and, to that end, may the court exercise discretion in recommending an appropriate course of mental health treatment.

Respectfully Submitted,



Carmeta V. Albarus -Lindo, LCSW

LICENSED CLINICAL SOCIAL WORKER
LIC # R-051798-1

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

----- X
STATE OF MARYLAND :
 :
 v. : Criminal No. 102675
 :
 LEE BOYD MALVO, :
 :
 Defendant. :
-----X

PLEA HEARING

Rockville, Maryland

October 10, 2006

DEPOSITION SERVICES, INC.
12321 Middlebrook Road, Suite 210
Germantown, Maryland 20874
(301) 881-3344

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

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 v. : Criminal No. 102675
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 Defendant. :
 :
-----X

Rockville, Maryland

October 10, 2006

WHEREUPON, the proceedings in the above-entitled
matter commenced

BEFORE: THE HONORABLE JAMES L. RYAN, JUDGE

APPEARANCES:

FOR THE STATE:

KATHERINE WINFREE, Esq.
State's Attorney's Office
50 Maryland Avenue, 5th Floor
Rockville, Maryland 20850

FOR THE DEFENDANT:

WILLIAM C. BRENNAN, JR., Esq.
TIMOTHY J. SULLIVAN, Esq.
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6305 Ivy Lane, Suite 700
Greenbelt, Maryland 20770

I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>Page</u>	<u>VOIR DIRE</u>
<u>For the State:</u>						
(None)						
<u>For the Defendant:</u>						
Lee Boyd Malvo		--	--	--		7

P R O C E E D I N G S

1
2 THE BAILIFF: -- Court for Montgomery Court is now in
3 session, the Honorable James L. Ryan presiding.

4 THE COURT: Hi everybody, please have a seat.

5 THE CLERK: Calling Criminal 102675, State of
6 Maryland versus Lee Boyd Malvo.

7 MS. WINFREE: Good morning Your Honor, Kate Winfree
8 on behalf of the State of Maryland.

9 THE COURT: Hi, Ms. Winfree, how are you doing today?

10 MS. WINFREE: Good morning.

11 MR. BRENNAN: Good morning Your Honor, William
12 Brennan on behalf of Lee Malvo. Mr. Malvo is standing to my --

13 THE COURT: Morning.

14 MR. BRENNAN: -- left Your Honor.

15 THE COURT: Morning.

16 MR. SULLIVAN: Morning Your Honor, Tim Sullivan on
17 behalf of Mr. Malvo.

18 THE COURT: Morning. All right, yes ma'am?

19 MS. WINFREE: Yes Your Honor, we are here for a plea.
20 Mr. Malvo has agreed to plead to all six counts of first degree
21 murder for which he has been previously indicted. We have
22 agreed that the sentencing will be deferred until November 9th.
23 And the State is making no sentencing concessions, the State
24 has already given Mr. Malvo notice that pursuant to Criminal
25 Law Article Section 2-203, the State intends to seek a sentence

1 of life without the possibility of parole and aside from that
2 there are -- and that isn't even an agreement. There are no
3 other concessions. There are no concessions whatsoever, Your
4 Honor.

5 THE COURT: Okay thank you.

6 MR. BRENNAN: And Your Honor --

7 THE COURT: All right Mr. -- I'm sorry Mr. Brennan.

8 MR. BRENNAN: Your Honor we would ask the Court to
9 set a sentencing date to the convenience of the Court and the
10 parties to allow counsel for Mr. Malvo, Mr. Sullivan and I, to
11 attempt to effectuate a global resolution of Mr. Malvo's legal
12 problems and we'll advise the Court of any progress we've made
13 in that regard --

14 THE COURT: All right.

15 MR. BRENNAN: -- prior to the sentencing Your Honor.
16 But other than that, and that's certainly not in agreement with
17 the State, that's something that counsel has to do Your Honor
18 once we have the plea occur today Your Honor.

19 THE COURT: Okay so let's do the plea first and then
20 we'll confirm the sentencing date. All right, now Mr. Brennan,
21 Mr. Sullivan, would you prefer to do the voir dire questions?

22 MR. BRENNAN: Mr. Sullivan and I, Your Honor, met
23 with Mr. Malvo on Sunday and we went over the voir dire. We're
24 prepared to do it --

25 THE COURT: Okay fine.

1 MR. BRENNAN: -- if --

2 THE COURT: And young man, would you raise your right
3 hand please? Thank you. Now Mr. Brennan, Mr. Sullivan, is he
4 okay right there or would you prefer him to come to the stand?

5 MR. BRENNAN: I would prefer that we have him next to
6 us Your Honor --

7 THE COURT: Okay fine.

8 MR. BRENNAN: -- so if there's anything, we may
9 consult with our client.

10 THE COURT: Okay that'd be fine.

11 LEE BOYD MALVO

12 the defendant, having been first duly sworn, was examined and
13 testified as follows:

14 THE COURT: Now Mr. Malvo, what's going to happen is
15 this. I understand you intend to plead guilty to the six
16 charges placed against you. We have a procedure to go through
17 and it includes asking you several questions about your plea
18 and the object is to make sure that the plea you're offering is
19 being offered by you voluntarily, knowingly and intelligently
20 and that there is a factual basis to base it on. So Mr.
21 Brennan and Mr. Sullivan are going to ask you a series of
22 questions about the whole circumstances. If you don't
23 understand something, please let us know and we'll make sure
24 you do understand.

25 THE DEFENDANT: Yes Your Honor.

1 THE COURT: All right? Okay. Okay Mr. Brennan.

2 VOIR DIRE EXAMINATION

3 BY MR. BRENNAN:

4 Q Thank you Your Honor. Mr. Malvo, as we discussed on
5 Sunday, we're going to inquire about three separate areas of
6 your rights. One, the rights that you may be giving up by
7 entering a plea, two, your understanding what's occurring and
8 three, the plea agreement okay? If we were to go to trial
9 you'd be entitled to a jury of 12 people selected at random
10 from the community, their verdict must be unanimous. Do you
11 understand that?

12 A Yes, sir.

13 Q Alternatively, you could waive a jury and be tried by
14 the Court sitting by himself or herself and regardless of
15 whether it's a jury trial or a Court trial, the standard of
16 proof that would be applied would be guilt beyond a reasonable
17 doubt. Do you understand that?

18 A Yes, sir.

19 Q Okay. Further if you were to go to trial you'd have
20 the right to confront and cross-examine the witnesses. The
21 witnesses would take the witness stand, Mr. Sullivan and I
22 would have an opportunity to ask them questions. Do you
23 understand that?

24 A Yes, sir.

25 Q Further if we were to go to trial, if you needed the

1 subpoena power of the Court to compel witnesses to come to
2 Court to testify on your behalf, you'd have the subpoena power
3 of the Court to cause witnesses to come to Court on your
4 behalf. Do you understand that?

5 A Yes, sir.

6 Q Further you have the right to testify on your own
7 behalf and also you have the right if you did not testify on
8 your own behalf it could not be held against you. That is if
9 it were a jury trial, the Court would instruct the jury that
10 they could not hold it against you your failure to testify. Do
11 you understand that?

12 A Yes, sir.

13 Q Further if you were to go to trial you would have the
14 right to contest the admissibility of any evidence such as any
15 pretrial statements that were made, any searches that were made
16 and by pleading guilty you give up or waive that right to
17 contest the admissibility of any evidence. Do you understand
18 that?

19 A Yes.

20 Q Further by going to trial you would have an automatic
21 right to appeal should you be convicted at trial but by
22 pleading guilty do not have an automatic right to appeal. You
23 have the right to what they call seek leave to appeal to the
24 Court of Special Appeals and that is not automatic. Do you
25 understand that?

1 A Yes, sir.

2 Q Further by pleading guilty you give up or waive those
3 rights that we've discussed. You give up the right to a jury
4 trial, give up the right to a Court trial, give up the right to
5 confront and cross-examine witnesses, give up the right to
6 testify on your own behalf, give up the right to subpoena
7 witnesses to come to Court, give up the right to contest the
8 admissibility of evidence and to give up the right to an
9 automatic appeal. Do you understand those rights?

10 A Yes, sir.

11 Q And do you knowingly, intelligently waive those
12 rights?

13 A Yes, sir.

14 Q Okay. The other area that is important for the Court
15 to understand is whether or not you understand the proceedings
16 here today. Are you able to read, write and understand the
17 English language?

18 A Yes, sir.

19 Q And tell the Court how far you went in school, Mr.
20 Malvo.

21 A I graduated from high school.

22 Q Okay. Have you taken any medicine today or recently
23 that would affect your ability to understand the proceedings
24 today?

25 A No.

1 Q Okay. Have you ever been treated by a psychiatrist
2 or a patient in the mental hospital to the extent that it would
3 affect your ability to understand or to comprehend what's
4 occurring here today?

5 A No.

6 Q Okay. Other than the plea agreement which has been
7 recited on the record which is that you plead guilty to six
8 counts of first degree murder and the State reserves its right
9 of allocution including seeking six counts, excuse me six
10 consecutive sentences of life without the possibility of
11 parole, have any other promises, threats or inducements been
12 made to get you to plead guilty?

13 A Let's see, you have to --

14 Q Sorry (unintelligible).

15 A -- (unintelligible).

16 Q Other than the plea agreement that has been recited,
17 which is that you plead guilty to six counts of first degree
18 murder and the State reserves the right to seek six sentences
19 of life in prison without the possibility of parole, have any
20 other promises, threats or inducements been made to get you to
21 plead guilty in this case?

22 A None whatsoever.

23 Q Okay. The other thing the Court will inquire of is
24 whether or not you are on parole or probation in any other
25 jurisdiction because this plea may affect any violation of

1 probation. Are you on parole or probation in any jurisdiction?

2 A No.

3 Q Okay. The other thing that's required under Maryland
4 Law is whether or not you are a citizen because these
5 convictions could result in the deportation. Are you a citizen
6 of the United States?

7 A No.

8 Q Do you understand that by pleading guilty to six
9 counts of first degree murder that may qualify you for
10 deportation?

11 A Yes.

12 Q Okay. Last and as Mr. Sullivan suggested most
13 importantly, are you satisfied with the services of your
14 attorney up to this point?

15 A Yes.

16 Q Okay. I believe that, Your Honor, completes the full
17 voir dire in this case, Your Honor.

18 THE COURT: Okay. Ms. Winfree?

19 MS. WINFREE: Yes Your Honor thank you.

20 THE COURT: No I mean are you satisfied all the
21 required --

22 MS. WINFREE: Yes I am --

23 THE COURT: -- questions --

24 MS. WINFREE: -- Your Honor.

25 THE COURT: -- have been asked and answered? Okay

1 well I'm going to find for the record that the defendant is
2 freely and intelligently and voluntarily offering his plea of
3 guilty. Now young man, what's going to happen now is Ms.
4 Winfree is going to recite into the record the basic facts that
5 she believes the State could prove if this case were to go to
6 trial. And when she's finished I'm going to ask you and Mr.
7 Brennan and Mr. Sullivan if that's essentially what you're
8 admitting so please listen to what she's saying.

9 THE WITNESS: Yes, sir.

10 MS. WINFREE: And --

11 THE COURT: Okay ma'am.

12 MS. WINFREE: -- just so you'll know Your Honor, it
13 is rather lengthy --

14 THE COURT: Okay.

15 MS. WINFREE: -- as you might expect. Your Honor
16 today Mr. Lee Boyd Malvo is pleading guilty to six counts of
17 first degree murder for crimes that he and his co-defendant
18 John Allen Muhammad committed here in Montgomery County,
19 Maryland. Had the case gone to trial, the evidence would have
20 shown that these six murders occurred on three separate days in
21 October of 2002. These victims were James Martin who was
22 killed on October 2nd, James Buchanan who was killed on October
23 3rd, Premkumar Walekar also killed on October 3rd, Maria Sarah
24 Ramos killed on October 3rd, Lori Ann Lewis-Rivera killed on
25 October 3rd and finally Conrad Johnson who was murdered on

1 October 22nd.

2 These six murders were part of a larger robbery,
3 extortion and killing spree that spanned from September the 5th
4 of 2002 to October the 24th of 2002 in which six other victims
5 were murdered and six more victims suffered gunshot wounds as a
6 result of the defendant's actions. These other shootings
7 occurred elsewhere in Maryland, Virginia, Washington, D.C.,
8 Alabama and Louisiana.

9 The evidence would have shown that on October the
10 2nd, 2002 at approximately 6:02 p.m. in the parking lot of a
11 Shoppers Food Warehouse located on Randolph Road, Wheaton,
12 Montgomery County, Maryland, James Martin was walking toward
13 the store when he was shot once in the back with a bullet fired
14 from a distance. Mr. Martin said help me and fell to the
15 ground almost immediately dead. There were no eyewitnesses and
16 no meaningful ballistics evidence recovered.

17 However the autopsy revealed that the entry wound to
18 Mr. Martin's back was very small, the exit wound to his chest
19 was very large and there were massive internal injuries, all of
20 which are characteristic of and consistent with a small caliber
21 bullet fired from a high-velocity rifle. The following day,
22 the first of four murders that would occur within about two
23 hours of each other took place; the first of four murders took
24 place at 7:41 a.m. at the Fitzgerald Auto Mall in Rockville,
25 Montgomery County, Maryland.

1 The victim, James Sonny Buchanan was mowing the lawn
2 on the outer perimeter of the property when he was shot once in
3 the back with a bullet fired from a distance. Mr. Buchanan,
4 clutching his chest, ran on to the parking lot of the
5 dealership, collapsed and later died. Once again there were no
6 eyewitnesses and no meaningful ballistics evidence.

7 As with Mr. Martin however the autopsy revealed that
8 the entry wound to Mr. Buchanan's back was very small, the exit
9 wound to his chest was very large, there were massive internal
10 injuries and the bullet had fragmented into many small pieces,
11 the so-called snowstorm effect, all of which are characteristic
12 of and consistent with a small caliber bullet fired from a
13 high-velocity rifle.

14 30 minutes later at approximately 8:12 a.m. Premkumar
15 Walekar was fueling his taxi cab at the Mobile Gas Station on
16 Connecticut Avenue in Silver Spring, Montgomery County,
17 Maryland when he was shot once with a bullet that was fired
18 from a distance. Mr. Walekar staggered to a nearby car asking
19 for assistance however he died within minutes. The autopsy
20 revealed that the bullet had entered under his left arm.

21 It also showed a small entrance wound, massive
22 internal injuries and the snowstorm effect characteristic of
23 and consistent with a small caliber bullet fired from a high-
24 velocity rifle. Ballistics tests later established that the
25 bullet fragments recovered from Mr. Walekar's body had been

1 fired from the .223 caliber Bushmaster rifle that was found in
2 the car with the defendant and his co-defendant when they were
3 arrested 21 days later in Frederick, Maryland.

4 At approximately 8:37 a.m. again on October 3rd,
5 2002, Maria Sarah Ramos was sitting on a bench in front of the
6 Crisp & Juicy Restaurant in the Leisure World Shopping Center
7 in Silver Spring, Montgomery County, Maryland. She was shot
8 once in the head with a bullet that was fired from a distance
9 and she died instantly. The autopsy revealed that the bullet
10 had entered the front of her head and exited the back. The
11 entrance wound was small, the exit wound was large and the
12 internal injuries massive characteristic of once again and
13 consistent with a small caliber bullet fired from a high-
14 velocity rifle.

15 Ballistics tests later established that the bullet
16 fragments recovered from Ms. Ramos' body and a copper bullet
17 jacket recovered from inside the restaurant had been fired from
18 the .223 caliber Bushmaster rifle found in the car with Mr.
19 Malvo and his co-defendant when they were arrested.

20 Again on October the 3rd at approximately 9:58 a.m.
21 Lori Ann Lewis-Rivera was vacuuming her minivan at the Shell
22 Station at the corner of Connecticut Avenue and Knowles Avenue
23 in Kensington, Montgomery County, Maryland when she was shot
24 once in the back with a bullet that was fired from a distance.
25 The entrance wound was very small, there was no exit wound, the

1 internal injuries were massive and the bullet once again had
2 fragmented with a snowstorm effect characteristic of and
3 consistent with a small caliber bullet fired from a high-
4 velocity rifle.

5 Ballistics tests later established that the bullet
6 fragments recovered from Ms. Lewis-Rivera's body had been fired
7 from the .223 caliber Bushmaster rifle that was found in the
8 car with the defendant and his co-defendant when they were
9 arrested. Thereafter between October the 3rd, 2002 and October
10 the 19th, 2002, four additional victims were murdered and three
11 others seriously wounded in shootings that occurred in the
12 District of Columbia, Virginia and elsewhere in Maryland and
13 I'll outline those shootings in a moment.

14 The final murder and the sixth that occurred in
15 Montgomery County took place on October the 22nd, 2002 at about
16 6:00 a.m. While onboard his Ride On bus in the area of Grand
17 Pre Road in Silver Spring, Montgomery County, Maryland, the
18 driver, Conrad Johnson was shot once in the upper abdomen with
19 a bullet that was fired from a distance. Mr. Johnson was taken
20 by helicopter to the hospital where he later died during
21 surgery.

22 The autopsy revealed that the entrance wound was very
23 small, there was no exit wound, the internal injuries were
24 massive and the bullet had fragmented with a snowstorm effect
25 characteristic of and consistent with a small caliber bullet

1 fired from a high-velocity rifle. And once again ballistics
2 tests later established that the bullet fragments recovered
3 from his body had been fired from the .223 Bushmaster that was
4 recovered in the defendant's possession at the time of his
5 arrest.

6 In a patch of woods near the scene of Mr. Johnson's
7 murder, investigators found tacked to a tree a clear plastic
8 Ziploc bag that contained a note. Fifty feet beyond the
9 location of the note, investigators located a black duffle bag,
10 a left-handed glove and a second Ziploc bag. The note which
11 exhibited 13 small adhesive stars believed to represent the 13
12 victims stated in part for you Mr. Police, call me God, do not
13 release to the press. You did not respond to the message, you
14 departed from what we told you to say and you departed from the
15 time. Your incompetence has cost you another life.

16 You have until 9:00 a.m. to deliver the money and
17 8:00 a.m. deliver this response. We've caught the sniper like
18 a duck in a noose knot to let us know you have your demands.
19 Thereafter in the early morning hours of October the 24th, 2002
20 at a rest area in Frederick, Maryland, Mr. Malvo and John Allen
21 Muhammad were arrested while sleeping in a blue 1990 Chevrolet
22 Caprice owned by Mr. Muhammad.

23 Inside the car, investigators recovered numerous
24 evidentiary items including a loaded .223 caliber Bushmaster
25 rifle that yielded Mr. Malvo's DNA and fingerprint, a black

1 duffle bag containing an ammo magazine that yielded Mr. Malvo's
2 DNA and a rifle sight with Muhammad's DNA, a global positioning
3 system receiver, earplugs, maps and Ziploc plastic bags, a pair
4 of walkie-talkies, a digital voice recorder with Mr. Malvo and
5 Mr. Muhammad's voices recorded, receipts from Save-A-Lot and
6 Piggly Wiggly stores located in Baton Rouge, Louisiana and a
7 plastic bag from the Big Lots store, a slip of paper containing
8 the sniper taskforce hotline telephone number and a Sony laptop
9 computer loaded with the software program Microsoft Streets and
10 Trips 2002.

11 In this program were many maps of the Washington,
12 D.C. area including one marked with several skull and
13 crossbones icons at locations where various shootings had
14 occurred including the shootings of Mr. Martin and Mr.
15 Buchanan. Additionally the computer's hard drive included a
16 Microsoft Word file that contained excerpts of an extortion
17 demand. Finally investigators discovered that the trunk of the
18 Caprice had been fashioned into a sniper's nest. The rear seat
19 was hinged to provide easy access to the trunk, the inside of
20 the trunk was spray-painted blue to blend in with the color of
21 the exterior and a hole had been cut into the trunk frame just
22 above the license plate, a hole large enough to accommodate the
23 muzzle of a rifle.

24 In perpetrating the six charged murders, Mr. Malvo
25 and his co-defendant were attempting to extort \$10 million from

1 the government. This extortion campaign was preceded by a
2 series of murder/robberies through which the defendants
3 generated the means and tools with which to carry out this
4 campaign. The first of these occurred on September the 5th,
5 2002 in Clinton, Maryland where Paul LaRuffa was shot and
6 robbed outside of Margellina's Restaurant which he owned. Mr.
7 LaRuffa was shot five times with a .22 caliber revolver. His
8 Sony laptop and a briefcase containing bank deposit bags and
9 \$3,500 in cash were stolen.

10 The Sony laptop is the one that was found in the
11 Chevy Caprice with the defendant at the time of his arrest.
12 Additionally about six weeks after the robbery, the briefcase
13 and empty bank deposit bags were found along with some clothing
14 about a mile from the LaRuffa shooting and this clothing
15 yielded Mr. Malvo's DNA. Ten days later on September the 15th,
16 2002, also in Clinton, Maryland, Muhammad Rashid was shot while
17 closing the Three Roads Liquor Store. He was shot at close
18 range with a .22 caliber revolver by a young man he later
19 identified as Mr. Malvo. Additionally evidence of two high-
20 velocity rifle shots was recovered from inside the store.

21 On September the 21st, 2002, Claudine Parker and
22 Kellie Adams were shot immediately after closing the Zelda Road
23 ABC Liquor Store in Montgomery, Alabama. Mrs. Parker died from
24 a single gunshot wound that entered her back. Ms. Adams was
25 shot through her neck but survived. Both bullets came from a

1 high-velocity rifle. Simultaneous with the shootings, a young
2 man later identified as Mr. Malvo ran up to the victims and
3 began to go through their purses. Mr. Malvo was pursued from
4 the scene by a police officer and another bystander. During
5 the chase he dropped a gun catalog and a .22 caliber revolver.

6 The catalog yielded Mr. Malvo's fingerprints.
7 Ballistics tests later confirmed that the revolver that he
8 dropped was the same gun used earlier to shoot Mr. LaRuffa and
9 Mr. Rashid in the shootings that I just described. In addition
10 ballistics tests later established that both women, Ms. Parker
11 and Ms. Adams had been shot with the .223 caliber Bushmaster
12 rifle recovered from the car at the time of the defendant's
13 arrest.

14 Finally, two days later on September the 23rd, 2002
15 in Baton Rouge, Louisiana, Hong Em Ballenger was murdered
16 outside of a Beauty Depot store. She was shot once in the neck
17 with a bullet fired from a high-velocity rifle. Bullet
18 fragments recovered from her body were later established to
19 have been fired from the Bushmaster rifle recovered with the
20 defendant at the time of his arrest. Additionally two
21 eyewitnesses saw Mr. Malvo flee the scene with Ms. Ballenger's
22 purse and one of them saw him get into the Chevy Caprice.

23 Now as previously mentioned Mr. Malvo and Mr.
24 Muhammad began their extortion scheme with the murders of Mr.
25 Martin, Mr. Buchanan, Ms. Ramos and Ms. Lewis-Rivera on October

1 the 2nd and 3rd in Montgomery County. At approximately 9:15
2 p.m. later that day on October the 3rd, 2002, Pascal Charlot
3 was shot once in the upper chest as he crossed Georgia Avenue
4 Northwest in Washington, D.C. The bullet was fired from a
5 distance from a high-velocity rifle. Bullet fragments
6 recovered from his body were found to have been fired from the
7 .223 caliber Bushmaster rifle. In addition eyewitnesses placed
8 the Caprice at the scene of the shooting.

9 The next day, October the 4th, 2002, outside of
10 Michael's craft store in Fredericksburg, Virginia, Caroline
11 Seawell was wounded by a single shot from a high-velocity
12 rifle. An eyewitness saw the Caprice in the parking lot at the
13 time of the shooting. Once again ballistics tests established
14 that Ms. Seawell had been shot with a bullet fired from the
15 .223 Bushmaster rifle.

16 Three days later on October the 7th, 2002, outside of
17 Benjamin Tasker Middle School in Bowie, Maryland, 13-year-old
18 Iran Brown was shot once in the chest from a distance with a
19 high-velocity rifle. An eyewitness saw the Caprice in the
20 neighborhood in the night before the shooting. In the woods
21 next to the school investigators found a ballpoint pen barrel,
22 a shell casing and a Tarot, the death card with handwriting on
23 it. The shell casing and bullet fragments recovered from Iran
24 Brown's body were matched to the .223 caliber Bushmaster rifle.
25 In addition, Muhammad's DNA was found on the pen barrel.

1 The recovered death Tarot card contained the first
2 communication from the defendants. Written on it was for you
3 Mr. Police, code call me God, do not release to the press.
4 These words later appeared repeatedly in the written and oral
5 communications received from the defendants during their
6 extortion campaign. Two days later on October the 9th, 2002 at
7 a Sunoco gas station in Manassas, Virginia, Dean Meyers was
8 fatally shot in the head by a single bullet fired from a high-
9 velocity rifle later established by ballistics tests to have
10 been fired from the .223 Bushmaster rifle.

11 In addition two eyewitnesses saw Muhammad in the
12 Caprice in the immediate vicinity of the shooting immediately
13 before and after the fatal shooting of Dean Meyers. Finally, a
14 map recovered from the area where the shot had been fired
15 contained both defendants Mr. Malvo's and Mr. Muhammad's
16 fingerprints. On October the 11th, 2002, at an Exxon gas
17 station in Massaponax, Virginia, Kenneth Bridges was fatally
18 shot by a single bullet to the back fired from a high-velocity
19 rifle later established by ballistics tests to have been the
20 .223 Bushmaster rifle. An eyewitness saw the Caprice near the
21 gas station on the morning of the shooting.

22 On October the 14th, 2002 at a Home Depot store in
23 Fairfax, Virginia, Linda Franklin was fatally shot in the head
24 by a single bullet fired from a high-velocity rifle once again
25 later established by ballistics tests to be the .223 Bushmaster

1 rifle. Finally, on October the 19th, 2002, outside a Ponderosa
2 Steakhouse in Ashland, Virginia, the second to last shooting
3 occurred. Jeffrey Hopper and his wife were walking to their
4 car after dinner when Jeffrey Hopper who survived was shot once
5 in the abdomen with a bullet fired from a high-velocity rifle.
6 Near the scene of the shooting police recovered a shell casing,
7 a cinna-raisin (phonetic sp.) candy wrapper and a Ziploc bag
8 containing a note.

9 The shell casing and bullet fragments recovered from
10 Mr. Hopper's body were established to have been fired from the
11 .223 Bushmaster rifle. The cinna-raisin wrapper and the Ziploc
12 bag contained Mr. Malvo's DNA. The note found near the scene
13 had five adhesive stars attached to it which the defendants
14 claimed of communications to be the lives lost because of
15 police incompetence. The note also read in part for you Mr.
16 Police, call me God, do not release to the press, we've tried
17 to contact you to start negotiation. These people took our
18 call for a hoax or a joke so your failure to respond has cost
19 you five lives.

20 If stopping the killing is more important than
21 catching us now then you will accept our demand which are non-
22 negotiable. One you will place \$10 million in Bank of America
23 account number, and the account number's listed, we will have
24 unlimited withdrawal at any ATM worldwide. You will activate
25 the bank account, credit card and pin number. We will contact

1 you Ponderosa Buffet, Ashland, Virginia, telephone number and
2 the number is provided, 6:00 a.m. Sunday morning. You have
3 until 9:00 a.m. Monday morning to complete transaction. Try to
4 catch us withdrawing at least you will have less body bags.

5 Two, if trying to catch us now more important that
6 prepare your body bags. If we give you our word that is what
7 takes place. Word is bond. P.S. your children are not safe
8 anywhere at any time. The last shooting, Conrad Johnson's
9 murder, took place three days later on October the 22nd. Two
10 days later as I've described the defendants were arrested in
11 the Chevy Caprice with the evidence that I previously
12 described.

13 After Mr. Malvo's arrest and following his transfer
14 to Fairfax County, Virginia, Mr. Malvo spoke to investigators
15 at length. At that time he claimed to be the shooter in each
16 of the October the 2002 crimes. He had been instructed to
17 accept responsibility for the shootings by Muhammad who told
18 Mr. Malvo that as a juvenile he would be less likely to get the
19 death penalty. Subsequently however as outlined in his
20 testimony at the trial of John Allen Muhammad, Mr. Malvo
21 described the origins and the motive for the scheme that had
22 been made up by Mr. Muhammad.

23 He described how he and Muhammad came to Montgomery
24 County where they drove around scouting areas that would be
25 good places to shoot. According to Mr. Malvo they looked for

1 and targeted locations that did not have surveillance cameras
2 and would be easy to leave without detection. At times they
3 abandoned previously selected sights because of too many
4 witnesses or too much traffic. Mr. Malvo also testified that
5 in all but three of the shootings he acted as the spotter,
6 sitting in the front passenger seat of the Caprice while
7 Muhammad went into the trunk where he fired the .223 Bushmaster
8 rifle at the victims.

9 In three of the shootings, Mr. Malvo fired the shots
10 from outside the car while he remained in communication with
11 Muhammad. These were the non-fatal shootings of Iran Brown and
12 Jeffrey Hopper and the murder of Conrad Johnson.

13 THE COURT: Thank you Ms. Winfree. Mr. Brennan, Mr.
14 Sullivan?

15 MR. SULLIVAN: Your Honor, Mr. Malvo agrees to the
16 statement of facts proffered by the State as to the six first
17 degree murders to which he's pled in this jurisdiction.
18 However the State in its statement of facts talked about
19 shootings and/or murders in Washington, Alabama and/or
20 Louisiana and in any other states and at this point Your Honor,
21 pending our attempts for a global disposition and global
22 resolution of all the pending cases, Mr. Malvo can't admit
23 guilt to those jurisdictions.

24 But for the indictment in this case Your Honor he
25 believes that the State could prove beyond a reasonable doubt

1 the State's proffer.

2 THE COURT: Okay sir. Are those exceptions
3 satisfactory to the State?

4 MS. WINFREE: Yes Your Honor.

5 THE COURT: Okay then, based on the proffer I'll find
6 there's a factual basis for this plea and I'll find the
7 defendant guilty of six charges of first degree murder as
8 charged.

9 MR. BRENNAN: Your Honor we would request a
10 presentence report in the case Your Honor.

11 THE COURT: Okay now Mr. Brennan, I assume there was
12 one done in Virginia.

13 MR. BRENNAN: There was and Mr. Sullivan and I have
14 spoken to our client about that and quite frankly Your Honor we
15 don't want to create more work for the State of Maryland but we
16 would have much more confidence in one that's done by this
17 jurisdiction rather than what was done in Virginia. And
18 circumstances have changed significantly Your Honor for our
19 client since the presentence report was performed in Virginia.
20 I mean there's been the testimony at this trial, Your Honor, so
21 there's a lot of new information supplied on Mr. Malvo's behalf
22 Your Honor.

23 THE COURT: Yes all right. Well I believe probably
24 would be effective is for our probation department to contact
25 Virginia probation, get a copy of their presentence

1 investigation and then start coming to your client.

2 MR. BRENNAN: That's correct Your Honor. We have no
3 really objections to them viewing the Virginia one but
4 certainly Your Honor we'd like it updated and we'd certainly
5 like --

6 THE COURT: Sure.

7 MR. BRENNAN: -- the Maryland authorities to speak
8 with our client Your Honor.

9 THE COURT: Sure. And he'll speak to them when they
10 come to the --

11 MR. BRENNAN: That's correct Your Honor.

12 THE COURT: -- correction --

13 MR. BRENNAN: It was a guilty plea for the six in
14 this jurisdiction as Mr. Sullivan indicated.

15 THE COURT: All right. Okay. We'll set the
16 sentencing for November 9.

17 MS. WINFREE: Your Honor, could we possibly do it in
18 the afternoon? I have a habeas proceeding in front of Judge
19 Mason which I could move if we can't do this --

20 THE COURT: It's okay with me --

21 MS. WINFREE: -- sentencing in the --

22 THE COURT: -- I think.

23 MS. WINFREE: -- afternoon.

24 THE COURT: Joanna (phonetic sp.)? It's okay with
25 me? Okay. Is it okay with you gentlemen?

1 MS. WINFREE: 1 o'clock?

2 MR. BRENNAN: 1 o'clock's fine, yes Your Honor.

3 That'll be fine.

4 THE COURT: Okay we'll take --

5 MR. BRENNAN: Mr. Sullivan and I may have flights
6 later in the day but I think it's after hours Your Honor so.

7 THE COURT: All right. Okay sir, okay with you?

8 (No audible response.)

9 THE COURT: All right we'll set the sentencing for
10 November 9th, 1 o'clock, defendant will remain on the same bond
11 which is no bond.

12 MR. BRENNAN: Thank you very much Your Honor.

13 MR. SULLIVAN: Thank you Your Honor.

14 THE COURT: Okay thank you. Thank you.

15 MS. WINFREE: Thank you Your Honor, may we be
16 excused?

17 THE COURT: Okay, thank you.

18 (The proceedings were concluded.)

19

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√ Digitally signed by Cheryl Berryhill

DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC. hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Circuit Court for Montgomery County in the matter of:

Criminal No. 102675

STATE OF MARYLAND

v.

LEE BOYD MALVO

By:


CHERYL BERRYHILL
Transcriber

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

-----X
STATE OF MARYLAND :
 :
 :
 v. : Criminal No. 102675
 :
 LEE BOYD MALVO, :
 :
 Defendant. :
 :
-----X

SENTENCING

Rockville, Maryland

November 8, 2006

DEPOSITION SERVICES, INC.
12321 Middlebrook Road, Suite 210
Germantown, Maryland 20874
(301) 881 3344

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

-----X
STATE OF MARYLAND :
 :
 v. : Criminal No. 102675
 :
 LEE BOYD MALVO, :
 :
 Defendant. :
 :
-----X

Rockville, Maryland

November 8, 2006

WHEREUPON, the proceedings in the above-entitled
matter commenced

BEFORE: THE HONORABLE JAMES L. RYAN, JUDGE

APPEARANCES:

FOR THE STATE:

KATHERINE WINFREE, Esq.
VIVEK CHOPRA, Esq.
Assistant State's Attorneys
50 Maryland Avenue, 5th Floor
Rockville, Maryland 20850

FOR THE DEFENDANT:

TIMOTH J. SULLIVAN, Esq.
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Brennan Sullivan & McKenna LLP
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Greenbelt, Maryland 20770

P R O C E E D I N G S

1
2 THE BAILIFF: The Circuit Court for Montgomery County
3 is now in session, the Honorable James L. Ryan presiding.

4 THE COURT: Hi, everybody. Please have a seat.

5 THE CLERK: Criminal No. 102675, State of Maryland
6 versus Lee Boyd Malvo.

7 MS. WINFREE: Good afternoon, Your Honor. Kate
8 Winfree and Vivek Chopra --

9 THE COURT: Ms. Winfree.

10 MS. WINFREE: -- on behalf of the State of Maryland.

11 MR. CHOPRA: Good afternoon, Your Honor.

12 THE COURT: Hi, Mr. Chopra, how are you, sir?

13 MR. CHOPRA: I'm doing well. Good to see you.

14 THE COURT: Good. Nice to see you.

15 MR. SULLIVAN: Good afternoon, Your Honor. Timothy
16 Sullivan and William Brennan --

17 THE COURT: Hi, Mr. Sullivan.

18 MR. SULLIVAN: -- on behalf of Lee Boyd Malvo.

19 THE COURT: Hi, Mr. Brennan. Hi, Mr. Malvo.

20 MR. BRENNAN: Good afternoon, Your Honor.

21 THE COURT: Mr. Sullivan, Mr. Brennan?

22 MR. SULLIVAN: Your Honor, preliminarily, we've had
23 an opportunity to review, with Mr. Malvo, the presentence
24 report by Ms. Campbell. We have no objections, corrections, or
25 modifications to make to the report or to the suggested

1 guidelines affixed to the report.

2 THE COURT: Okay, sir. Thanks.

3 The State received a copy of this also?

4 MS. WINFREE: Yes, we did, Your Honor.

5 THE COURT: Okay. Great.

6 Okay. Yes. Mr. Sullivan, Mr. Brennan, would you
7 like to say anything on behalf of Mr. Malvo?

8 MR. SULLIVAN: Court's indulgence.

9 THE COURT: Sure. Want me to turn this machine on?

10 MR. SULLIVAN: No, Your Honor.

11 MR. BRENNAN: Your Honor, I think, we think, I
12 believe that there may be two victims that would like to
13 address the Court preliminarily, Your Honor. I think that's,
14 the State may want to put that on.

15 THE COURT: Anyway you all want to proceed is fine
16 with me.

17 MR. CHOPRA: Your Honor, Vicky Snyder is present in
18 the courtroom. I believe she wants to address the courtroom.

19 THE COURT: All right.

20 MR. CHOPRA: And I believe Sonia Wills as well, so we
21 could start with Ms. Snyder.

22 THE COURT: Would anybody want Ms. Snyder to be under
23 oath? No? Okay.

24 MR. SULLIVAN: Not necessary.

25 MR. BRENNAN: No, Your Honor.

1 MR. CHOPRA: No, Your Honor.

2 THE COURT: All right. Ms. Snyder, where would you
3 be more comfortable? Would you like to sit up here or you want
4 to --

5 MS. SNYDER: I can stand --

6 THE COURT: -- sit there?

7 MS. SNYDER: -- right here.

8 THE COURT: Okay, ma'am. Would you if yourself
9 first?

10 MS. SNYDER: Your Honor, Judge Ryan, my name is
11 Victoria Buchanan Snyder. I'm the sister of James Sonny
12 Buchanan.

13 Sonny was a vibrant, loving, hardworking individual
14 who cared about his family, community, and world.

15 Sonny will forever remain in our minds and hearts.

16 This has been a long road in the justice system. I
17 have sat through every trial of Muhammad and Malvo to represent
18 my brother, Sonny. I have watched Lee Boyd Malvo express
19 enjoyment of killing to feeling bad about it; to admitting to
20 killing my brother, Sonny, to denying it.

21 Muhammad and Malvo, both cowards and murderers, both
22 shot innocent people going about their daily lives. You hunted
23 them down and shot them, in Sonny's case, in the back. I say
24 to you, Mr. Malvo, you were old enough to know right from
25 wrong. Mr. Malvo, you committed these murders, as well as many

1 more precious lives that you have taken away, but you will have
2 your life to think about it.

3 Throughout all of this tragic loss of Sonny and the
4 others, the only hope I had and prayed for was that the snipers
5 were caught. I thank God they were caught before they could
6 continue killing innocent people. I thank God that their plans
7 fell apart.

8 More than anything, Your Honor, they should never be
9 allowed in society again. My hope is that Lee Boyd Malvo will
10 never enter society; that he will spend the rest of his life
11 behind bars; that he will not make a profit off his story; that
12 he will not ever be granted clemency or pardon.

13 And I want to thank my family and friends for their
14 love and support. I want to thank Montgomery County Victims
15 Advocates and the Montgomery County Peer Support for always
16 standing by me. And I would like to thank everyone at the
17 State's Attorney's Office, the Sniper Task Force, Sheriff's
18 Office, you Judge Ryan, and this Court, and even the media for
19 being so respectful of us, and especially, our community for
20 all the support.

21 Thank you.

22 THE COURT: Thank you, ma'am.

23 Yes, sir?

24 MR. CHOPRA: Your Honor, Ms. Wills would like to
25 address the Court as well.

1 THE COURT: Ms. Wills? Hi, Ms. Wills.

2 MS. WILLS: Good afternoon, Your Honor.

3 I am Sonia Wills, the mother of Conrad Johnson.

4 I don't have a long speech for you, young man. What
5 else could I say about Conrad that everyone here has not
6 already heard? He was a good man, and I want you to think
7 about that for the rest of your life.

8 Right now, I must say, for the past four years, I
9 have hated you. But I've prayed to God about this situation,
10 and why should I go on hating you. You have already hurt
11 yourself. It's sad to say, you're a very intelligent young
12 man, and you could have done so much more with your life. But
13 as I stated, you fell prey to the devil's advocates. You could
14 have chosen another road.

15 If you had spoken to my son just once, I am sure you
16 would have changed your life. But you never had that chance.
17 The only time you got close to him was when you shot him, when
18 you killed him. Right now, I, Conrad's mother, forgive you for
19 that.

20 I have to right here, I can't go on hating you. I
21 cannot go on hating you. That won't bring Conrad back. Okay?
22 And as I said previously, you have a right to destroy your
23 life, but having forgiven you right now, you have to make
24 amends with God. Read your bible every day and ask him to
25 forgive you. Okay?

1 I also want to thank the entire Montgomery County
2 judicial system. Judge Ryan, I do thank you for the hard work,
3 for giving me this chance to stand up here and address this
4 young man. I have nothing more to say, but God be with you.

5 Thanks.

6 THE COURT: Thank you, ma'am.

7 Yes, sir?

8 MR. CHOPRA: Your Honor, the State has some brief
9 remarks as well. I don't mind going first, and then --

10 MR. SULLIVAN: That's fine.

11 MR. CHOPRA: -- if the counsel has what they have to
12 say.

13 Your Honor, the State's sentencing recommendation is
14 six consecutive sentences of life without the possibility of
15 parole.

16 We're certainly well aware that much of the attention
17 of the filings and the reports and this sentencing proceeding
18 is going to be in regards to the defendant, and his background,
19 and his mental state. And that makes some sense because
20 sentencings are contextual. They are about this individual,
21 and what he did, and where he came from, and where he is now.

22 But we're also cognizant that as a State, we
23 represent the victims, and we must address the concerns of the
24 families and of the community. And we must remind this Court
25 who probably, wherein needs no reminder of the tremendous loss

1 that was inflicted upon them. So we start with the victims.

2 James Darnell Martin, James S. Buchanan, Prem Kumar
3 A. Walekar, Maria Sarah Ramos, Lori Ann Lewis Rivera, Conrad
4 Johnson. These citizens of Montgomery County were brothers,
5 fathers, sisters, mothers, parents. They worked. They
6 nurtured families. They had interests. They had hobbies. And
7 they had dreams. And all of this was taken away from them by
8 the actions of the defendant.

9 And the defendant's actions affected not just the
10 victims' families, because as a community, our lives were at a
11 standstill those terrible three weeks in October of 2002. Fear
12 and mistrust replaced all other emotions as the citizens of
13 Montgomery County went through the terror campaign propagated
14 by the defendant and his co-defendant, and as that terror
15 campaign played itself out across Washington, D.C.

16 So Your Honor, for these crimes, and the incredible
17 loss inflicted upon the victims' families, the State asks, and
18 must ask, for the absolute maximum sentence allowable under the
19 law for this defendant.

20 Yet, we would be remiss, because we represent many
21 interests in the courtroom, if we didn't acknowledge which has
22 been so ably demonstrated by the defendant's counsel in their
23 filings, and that is that the defendant has changed. He's
24 expressed what I'm sure is genuine remorse. He cooperated with
25 our prosecution of Mr. Muhammad, and then provided this Court

1 and the community, through his testimony in that trial, a much
2 better and more detailed understanding of their terrible crimes
3 and their motivations.

4 These acts of contrition in the testimony advanced
5 the healing process and the closure process for the victims'
6 families and for our entire community in Montgomery County.

7 I think it's fair to say that before the Montgomery
8 County trial of Mr. Muhammad, we certainly knew the what, but
9 it was only after Mr. Malvo's testimony that we knew so much
10 more about the how and the why. And there is value in that
11 contribution, and this Court must acknowledge it.

12 Mr. Malvo, in many ways, is a tragic figure, Your
13 Honor. His crimes, which he perpetrated as a cognizant,
14 thinking, and deliberate 17-year-old -- and those points are
15 important, Your Honor -- were brutal. Yet, he has grown
16 tremendously since then.

17 It's not lost upon the State that he was under the
18 sway of a truly evil man who infused a 17-year-old with the
19 ideology of hate, an ideology, it appears that Mr. Malvo has
20 now escaped from.

21 He's probably most tragic, Your Honor, because he can
22 add his name to those long list of names, of those persons
23 whose lives Mr. Muhammad destroyed.

24 Young man, we're still left with a terrible loss of
25 six lives in the worst criminal act ever perpetrated upon our

1 community, and with the fact that as a 17-year-old, without
2 mental defect, this defendant must bear full responsibility for
3 his criminal actions. And as such, and for those reasons, and
4 for those that were given far more eloquently by the victims'
5 families, the State is asking for six consecutive sentences of
6 life without the possibility of parole.

7 THE COURT: Thank you, sir.

8 MR. BRENNAN: Your Honor, I will just make a few
9 comments, then Mr. Sullivan will follow.

10 THE COURT: Okay, Mr. Brennan.

11 MR. BRENNAN: Your Honor, with respect to the State's
12 reference to Mr. Malvo having made acts of contrition and
13 efforts to cooperate and aid families in closure, he has done
14 that not only in this jurisdiction, the State of Maryland, but
15 he assisted briefly in Virginia.

16 But most importantly, Your Honor, as we sit here
17 today, he has continued to assist authorities and families in
18 closing out cases. He has assisted the authorities in Arizona
19 to close out their case and to bring closure to the family in
20 Arizona.

21 And as we sit, stand here this afternoon, Your Honor,
22 I've been contacted by another jurisdiction who's in the
23 process of attempting to close out one of their unsolved
24 homicides with the full cooperation and contrition of Mr.
25 Malvo.

1 So I would ask the Court to, not only to consider
2 what he has already done, Your Honor, but my client continues
3 to assist law enforcement authorities as appropriate with
4 attempts to close out cases as we move forward.

5 THE COURT: Thanks, Mr. Brennan.

6 MR. SULLIVAN: Thank you, Your Honor.

7 Your Honor, I just have a couple remarks, and then
8 Mr. Malvo would like to address the Court.

9 Your Honor, we're going to ask, at the end of the
10 day, that the Court impose concurrent sentences, concurrent to
11 each other here in this jurisdiction, as well as concurrent to
12 the sentences of life without parole in Virginia.

13 But Your Honor, I would be remiss not to talk about
14 Lee Malvo as Mr. Brennan and I and Mr. Cooley, his Virginia
15 lawyers, knew Lee Malvo.

16 And I can't speak with the eloquence or the emotion
17 that Ms. Wills spoke about moments ago, but I think that she's
18 a thousand percent correct; that this young man, but for the
19 random intervention of John Allen Muhammad in his life, would
20 not be sitting in a courtroom in Maryland, would not be sitting
21 in a cell in Red Onion in Pound, Virginia for the rest of his
22 life.

23 At the tender age of 15 or 16, John Allen Muhammad,
24 who I join the choir of people to say is a coward, took this
25 young man under his wing when there was no one else in the

1 world to take care of this young man, and he turned him into a
2 killing machine.

3 And I tell people often, and all the defense teams,
4 and the social workers, and the investigators, and you know, we
5 would be remiss if we didn't thank the Court, and the Public
6 Defender, Mr. DeWolfe, and the State Public Defender for giving
7 us the opportunity to represent Mr. Malvo in this case. It's
8 been an honor for Mr. Brennan and I to stand up and represent
9 Lee Malvo in this case.

10 But Your Honor, this young man is one of the most
11 intelligent, articulate people that Mr. Brennan and I have
12 encountered. He reads. He wonders why he did what he did, and
13 he'll have the rest of his life to try to figure it out. No
14 question about that.

15 But it is an absolute tragedy, absolute tragedy that
16 this young man was abandoned and led down a road of random
17 violence, murder, and hatred, because at the end of the day,
18 Your Honor, today, November 7th, 2006, that's not who Lee Boyd
19 Malvo is anymore.

20 And as we set forth in our submissions to the Court,
21 this young man has made a sea change of difference in his life,
22 and is trying to make some amends for the egregious conduct
23 that he perpetrated in our community.

24 And he knows that he'll never be able to seek total
25 forgiveness from the six families in this case, and he can only

1 do what he can do locked in a cell for the rest of his life,
2 but Your Honor, Mr. Malvo has come full circle, and he's done
3 things that I think the Court and the community and our
4 societies expect. He's accepted full and unmitigated
5 responsibility for what happened in this community in October
6 of 2002. He's done so without excuse. He's done so without
7 blaming other people.

8 Yes, he blamed other people early, and he took credit
9 for murders that he didn't commit, but that was part of the
10 plan, the plan that was instilled in him by Mr. Muhammad.
11 There is no Mr. Muhammad in Lee Malvo's life anymore. And
12 that's a good thing. And there's no John Allen Muhammad in our
13 community anymore, and that's a good thing.

14 And soon, there will be no Lee Boyd Malvo in our
15 community anymore, and Your Honor, I think that's a sad thing
16 because this young man has potential, and he has a future, and
17 he'll have to do it from a prison cell in Virginia. But he
18 merits a life of value, not a life of shame.

19 And Mr. Malvo has a couple remarks, Your Honor.

20 THE COURT: Okay, sir.

21 THE DEFENDANT: Good afternoon.

22 I know that, I know that I destroyed many dreams and
23 many more lives, and that each of you relive this every
24 morning, every birthday, every anniversary, every time you look
25 in your children's eyes. You relive it, and I'm reminded of

1 your loss in the countless many ways every day. I also know
2 that nothing I can or will ever say will change that fact.

3 As to the question of why John Allen Muhammad chose
4 me and directed me to kill and murder innocent people, chosen
5 at random by us, is a question that I'll never be able to
6 answer. What I can tell you is that there's a stark difference
7 between who I am today and who and what I was in October of
8 2002.

9 For a long time, I was unwilling and even incapable
10 of comprehending just how terribly I've affected so many lives.
11 I am truly sorry, grieved, and ashamed of what I've done to the
12 families and friends of Mr. Martin, Mr. Buchanan, Mr. Walekar,
13 Ms. Ramos, Mrs. Lewis Rivera, and Mr. Conrad Johnson. I accept
14 responsibility for killing your mother, father, sister,
15 brother, son, daughter, wife, husband, and friend.

16 For weeks and months, the image that haunted me the
17 most was that of Conrad Johnson. I thought of his sons who,
18 just for once, would like to play basketball with their father,
19 just one more time to see his face and hear his voice.

20 I also think of the pain and loss I have inflicted on
21 them, and I know that no matter how I or anyone tries, you just
22 can't explain away the pain this absence and emptiness causes a
23 child.

24 The holidays are here and with it the memories, and
25 to know that I robbed you and them of that opportunity is

1 something for which I'll never be able to forgive myself. It
2 is pure folly for me to think that they or anyone can forgive
3 me for taking the lives of their loved one.

4 That is all, Your Honor.

5 THE COURT: Okay. Thank you.

6 Young man, would you stand up, please?

7 Before I actually impose the sentence, I'd like to
8 acknowledge, for the record, the skill and professionalism of
9 the Sheriff's Department, not only in this case, but in the
10 previous trial for the, just the way they managed the entire
11 proceedings, that was very helpful to me, and I appreciate
12 that; as well as I want to acknowledge the assistance of my law
13 clerk, Joanna Worster (phonetic sp.). She was a big help
14 through this case and the previous case. I couldn't have done
15 this without her.

16 Now, young man, while you were in our local jail
17 waiting for your case to be heard, you contacted the
18 prosecutors and offered to give them information and
19 cooperation in the trial of John Allen Muhammad.

20 You testified at his trial. Your testimony appeared
21 to be truthful and was helpful to the prosecution. The
22 information and evidence you revealed, alone, made these
23 prosecutions worthwhile.

24 You've also given local prosecutors, law enforcement,
25 and law enforcement in other jurisdictions helpful information

1 to close other investigations in this and other states. You
2 should be commended for your acceptance of guilt and voluntary
3 assistance without any promise of leniency.

4 It appears you've changed since you were first taken
5 into custody in 2002. As a child, you had no one to establish
6 values or foundations for you. After you met John Allen
7 Muhammad and became influenced by him, your chances for a
8 successful life became worse than they already were.

9 You could have been somebody different. You could
10 have been better. What you are, however, is a convicted
11 murderer. You will think about that every day for the rest of
12 your life. You knowingly, willingly, and voluntarily
13 participated in the cowardly murders of innocent, defenseless
14 human beings.

15 You've shown remorse and you've asked for
16 forgiveness. Forgiveness is between you and your God, and
17 personally, between you and your victims, and the families of
18 your victims. This community, represented by its people and
19 the laws, does not forgive you.

20 You've been held accountable for the crimes you've
21 committed here. You will receive the maximum sentence allowed
22 by the law of this State. After the sentence has been imposed,
23 I will order the sheriff to remove you from this County and
24 State, and return you to where you came from.

25 The sentence I'm going to impose is consecutive to

1 every sentence or any sentence previously imposed in any
2 jurisdiction or in any state.

3 SENTENCING

4 For Count 1, the murder of James Martin, your
5 sentence is life without the possibility of parole.

6 Count 2, the murder of James S. Buchanan, your
7 sentence is life without the possibility of parole, consecutive
8 to, and that sentence will be consecutive to Count 1.

9 Count 3, the murder of Prem Kumar Walekar, your
10 sentence is life without the possibility of parole. That
11 sentence will be served consecutive to Counts 1 and 2.

12 And Count 4, the murder of Maria Sarah Ramos,
13 sentence will be a life sentence without the possibility of
14 parole, consecutive to the sentences imposed in Counts 1, 2,
15 and 3.

16 And in Count 5, the murder of Lori Ann Lewis Rivera,
17 your sentence will be life without the possibility of parole,
18 consecutive to the sentences imposed in Counts 1, 2, 3, and 4.

19 And in Count 6, the murder of Conrad Johnson, your
20 sentence will be life without the possibility of parole, and
21 will be served consecutive to the Counts imposed, sentenced
22 imposed in Counts 1, 2, 3, 4, and 5.

23 Good luck to you, young man.

24 Sheriff, this defendant's in your custody.

25 MR. CHOPRA: Thank you, Your Honor.

1 MR. BRENNAN: Good afternoon, Your Honor.

2 THE COURT: Okay, Mr. Brennan.

3 MR. SULLIVAN: Thank you, Your Honor.

4 THE COURT: Mr. Sullivan, thank you.

5 Mr. Chopra, don't leave. I want to talk to you.

6 (The proceedings were concluded.)

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√ Digitally signed by Kimberly L. Chwirut

DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC. hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Circuit Court for Montgomery County in the matter of:

Criminal No. 102675

STATE OF MARYLAND

v.

LEE BOYD MALVO

By:

Kimberly L. Chwirut

KIMBERLY L. CHWIRUT
Transcriber

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

-----X
STATE OF MARYLAND :
 :
 :
 v. : Criminal No. 102675
 :
 LEE BOYD MALVO, :
 :
 Defendant. :
 :
-----X

HEARING

Rockville, Maryland

June 15, 2017



COPY

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

-----X
STATE OF MARYLAND :
: :
v. : Criminal No. 102675
: :
LEE BOYD MALVO, :
: :
Defendant. :
: :
-----X

Rockville, Maryland

June 15, 2017

WHEREUPON, the proceedings in the above-entitled matter commenced

BEFORE: THE HONORABLE ROBERT A. GREENBERG, JUDGE

APPEARANCES:

FOR THE STATE:

BRIAN KLEINBORD, Esq.
State's Attorney's Office
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FOR THE DEFENDANT:

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THE COURT: Be seated please.

THE CLERK: Calling case number 102675, State of Maryland versus Lee Boyd Malvo.

MR. KLEINBORD: Good afternoon, Your Honor. Brian Kleinbord for the State.

THE COURT: All right.

MR. JOHNSTON: Your Honor, good afternoon. James Johnston on behalf of Mr. Malvo.

THE COURT: All right. And Mr. Butler?

MR. BUTLER: Yes, Your Honor. I am here for the victim's representative, Nelson Rivera, who is the husband of Lori Ann Lewis-Rivera, one of Mr. Malvo's victims.

THE COURT: All right. And so pursuant to a discussion in counsel, Mr. Butler has just entered his appearance in this case. And, remaining counsel, correct me if I am wrong, you both have no objection to Mr. Butler being allowed to participate. I think he is under the statute -- the relevant statute.

So why don't we just have Mr. Butler come up to Mr. Kleinbord's table. Because this memo that was filed on behalf of Mr. Butler's client was just provided to me today I am a little bit handicapped in terms of being able to intelligently digest it. But because, as I told counsel, I will very likely be filing a written opinion here I certainly will have the

1 opportunity to read it. And so we will just proceed if no one
2 objects. And I understand no one does? Correct?

3 MR. KLEINBORD: That is correct, Your Honor.

4 MR. JOHNSTON: That is correct, Your Honor.

5 THE COURT: Okay. All right. Mr. Johnston, then it
6 is your motion to correct an illegal sentence and I will hear
7 from you first.

8 MR. JOHNSTON: Thank you, Your Honor. I will attempt
9 to be brief. The Court has well over 100 pages of written
10 materials submitted by counsel for the State, the defendant,
11 and also now for the victim's representative. I did want to
12 put on the record what we discussed a few weeks ago on a
13 conference call. And that is that Mr. Malvo appears today
14 through counsel. He preferred to appear through counsel rather
15 than be physically present.

16 Your Honor, Lee Malvo last stood in this courthouse
17 just over 10 years ago, November 8, 2006, for sentencing. He
18 spoke in allocution. He apologized to his victims. He
19 accepted then and he continues to accept today responsibility
20 for his actions. He took complete and full responsibility both
21 for the impact of his actions on the victims, the victims'
22 families, the immediate families, and also the larger
23 community.

24 The sentencing judge, Judge Ryan at the time,
25 concluded that Mr. Malvo had shown remorse. Commended him for

1 accepting responsibility, agreed that he had ably assisted law
2 enforcement in a number of matters including, most importantly
3 perhaps, the prosecution of his co-defendant. To include
4 testifying at the co-defendant's trial without any promise of
5 benefit. And Judge Ryan also acknowledged that Mr. Malvo had
6 changed in very positive ways since his arrest about four years
7 earlier.

8 The Court then imposed --

9 THE COURT: Can I just interrupt you because --

10 MR. JOHNSTON: Certainly.

11 THE COURT: -- I am not sure that I actually did the
12 math. But do I understand that Mr. Malvo was about 21 when he
13 was sentenced?

14 MR. JOHNSTON: Yes.

15 THE COURT: Okay.

16 MR. JOHNSTON: The Court then imposed sentence of six
17 life sentences to be served without the benefit of parole.
18 Each of those was imposed consecutively to each other and to
19 any outstanding and unserved sentences. Which would include,
20 as the Court is aware, the Virginia matter for which he is
21 incarcerated at the Red Onion State Correctional Facility in
22 Pound Virginia today.

23 The sentence that Judge Ryan imposed guaranteed,
24 absence some active executive grace by the Governor of
25 Maryland, that Mr. Malvo would expire in prison. That he would

1 die in prison.

2 The real question we believe today is for juvenile
3 offenders, is the offense alone something which can preclude
4 any future consideration of release? No matter how remote that
5 may be, no matter how difficult that release process may be, no
6 matter how distant that that opportunity may be, we believe
7 that today the constitution of this country and the
8 constitution of this state, the Maryland Declaration of Rights,
9 require at least a chance at release for every juvenile
10 offender. Maybe a slim chance but that chance must exist for a
11 sentence, we believe, to survive constitutional scrutiny.

12 Now --

13 THE COURT: And it did exist in this case. You
14 concede that, right?

15 MR. JOHNSTON: The Court had the authority under the
16 plea agreement to impose any lawful sentence. Now as the Court
17 is well aware, Maryland requires a life sentence but it is
18 subject to suspension at the discretion of the Court.

19 THE COURT: Yes.

20 MR. JOHNSTON: Now the chance at release may be slim
21 but it must exist. And if we assume though, that life without
22 parole is an appropriate sentencing option for any juvenile, it
23 would only be legal if it is properly imposed. And what does
24 that mean?

25 That means two things, Your Honor. First, does

1 Miller and Montgomery apply to discretionary sentences? That
2 is really a key question. We believe it does. State
3 disagrees.. And second, if it does apply were the proper
4 procedures followed here to allow for a lawful sentence?

5 Your Honor, Montgomery v. Louisiana, which is 2016
6 January, made clear what really should have been evident from
7 the Miller case in 2012. And that is that it is not enough
8 merely to discretionarily consider a child's chronological age
9 in selecting a sentence. Instead, the sentencer must actually
10 give mitigating effect to the characteristics and circumstances
11 of youth.

12 In addition, the sentencer, and that may be a judge
13 or it may be a jury in some jurisdictions, may impose life
14 without parole only after making a properly informed forward
15 looking determination that that particular child, to quote
16 Montgomery, exhibits such irretrievable depravity that
17 rehabilitation is impossible.

18 THE COURT: Can I interrupt you here?

19 MR. JOHNSTON: Certainly.

20 THE COURT: I think I know what your answer is. But
21 it strikes me that virtually all of the cases that I have read,
22 and I have read a number of them now regarding this issue --
23 counsel has directed me to those cases. Involve -- I think one
24 of them is a double homicide. One can never say that a
25 homicide is run of the mill but they are unfortunately a

1 characteristic that we have in our society. People go out and
2 kill one another. They don't begin to approach in nature the
3 facts that Judge Ryan had before him when he sentenced your
4 client.

5 So, as you know, under Maryland law the trial judge
6 in fashioning a sentence is permitted to look at a wide array
7 of evidence including crimes that were charged and there were
8 no convictions. All of those sorts of considerations. And in
9 this case Judge Ryan had before him not only the six for which
10 your client was being sentenced but a virtual coast to coast
11 crime wave in which your client was involved.

12 Does the fact that this factual scenario is so vastly
13 different from any of the cases to which I have been directed
14 fit into this equation at all?

15 MR. JOHNSTON: I want to say two things, Your Honor,
16 to answer your question. First, the Supreme Court had the
17 ability to carve out particularly heinous offenses and they
18 chose not to.

19 THE COURT: But that really wasn't presented to them
20 in either one of those cases.

21 MR. JOHNSTON: I think if we look at the facts -- in
22 fact -- I think contrary to what Mr. Kleinbord avers in this
23 pleading -- Terrance Jamar Graham, which is the Graham case
24 2010, which discusses non-homicide offenses. Mr. Graham was
25 actually sentenced on a violation of probation after committing

1 another felony offense to life without parole. Henry Miller --
2 or Henry Montgomery, excuse me, killed a Sheriff's deputy in
3 Louisiana and initially received a sentence of death. He later
4 escaped from prison.

5 So, we are not dealing in these Supreme Court cases,
6 I think that Mr. Kleinbord wrote, with individuals who are
7 convicted of, quote/unquote, run of the mill homicides. But I
8 will also say --

9 THE COURT: And let me just say, that is my
10 terminology. It is not intended in any way to somehow minimize
11 the shock value of someone being killed. But it just seems to
12 me that the facts that we have before us are so vastly
13 different from any of the reported cases I have seen. So much
14 more gruesome and so much more serious. But you are
15 responding. So, go ahead.

16 MR. JOHNSTON: Well I think though that if we get too
17 far down the road of looking at it and understanding what
18 decision might be an appropriate decision today, after Miller
19 and Montgomery, then we are engaging essentially in the fact
20 finding that Miller and Montgomery tell the sentencing judge to
21 do.

22 One can look at the record today. Read Miller and
23 read Montgomery and see a path, potentially, if it is a lawful
24 sentence, for a trial judge to impose the maximum permissible
25 sentence. Whatever that may turn out to be once the Supreme

1 Court has completed in essence describing all of the possible
2 scenarios in which a person could be sentenced for a particular
3 criminal act.

4 And there are many, many unanswered questions and I
5 think that is the answer to the Court's question. The Supreme
6 Court has not ruled directly on consecutive sentences for
7 separate criminal events that occurred before 18 years of age.
8 Not ruled directly on the idea that each offense is often, and
9 a homicide almost certainly, comprised of other acts which may
10 carry criminal penalties themselves.

11 So the Supreme Court, as it wants to do, has not
12 described every possible scenario that a sentencing judge may
13 face. But I think, again, there is no opt out clause for
14 particularly heinous offenses. The point, as we see it, of
15 Miller and Montgomery is that the offense, while an important
16 component of the sentencing decision, is not any more important
17 than the idea that youth is a mitigator and that the individual
18 no matter how serious the offense, no matter how heinous, no
19 matter the impact on the community, the individual being
20 sentenced.

21 The question is, can that person plausibly, possibly,
22 be rehabilitated? Even if we are speaking about a remote
23 possibility far down the line. That is the question. And the
24 cases that the Court has read, Beal (phonetic sp.) for example
25 from Georgia. Which is a case where the Georgia Supreme Court

1 found that Montgomery applies to discretionary life without
2 parole sentences. The facts in many of those cases are
3 disturbing.

4 And any homicide, I think by definition, I think the
5 Court hinted at this -- we can say run of the mill homicide.
6 But every homicide by its very nature impacts the community.
7 Impacts both the individual, of course, and the individual's
8 family most typically, but also impacts the community. So, in
9 our view a homicide sentencing, is a homicide sentencing, is a
10 homicide sentencing. And Lee Boyd Malvo is equally protected.
11 And that would be our position, Your Honor.

12 THE COURT: All right.

13 MR. JOHNSTON: Your Honor, if we look as well at what
14 the Court is likely requiring from sentencing judges. And I
15 think part of our disagreement here may be the idea of
16 irreparable corruption. At whether or not that is required.
17 And there is really, I believe if you read Miller and
18 Montgomery, no way to see how a trial judge could appropriately
19 protect that community of juvenile homicide offenders from life
20 without parole, for whom it is unconstitutional, unless they
21 constitute that rare irreparably corrupt young person, without
22 making a decision that that person is in fact irreparably
23 corrupt.

24 THE COURT: A factual finding is what you are saying?

25 MR. JOHNSTON: Yes. Now the Supreme Court talks

1 about deferring to state sentencing systems and deferring to
2 state processes and that is a typical response. But that does
3 not leave the states free to sentence individuals who don't
4 fall into that category of rare juvenile homicide offenders.

5 And I think if we read that language carefully what
6 is instructive is the Supreme Court is not talking about a
7 larger community of juvenile offenders. The Supreme Court is
8 talking about within the community of juvenile first-degree
9 murder, principals in the first degree. So individuals who are
10 not protected by Graham. Individuals who killed or intended to
11 kill. Within that community it would be rare to impose life
12 without parole. And I think what the state poses here, Your
13 Honor, is we look at the facts totally and we see if there is a
14 way that we can imagine a trial judge imposing a life without
15 parole sentence. Not what was before Judge Ryan.

16 Judge Ryan commended, as I mentioned earlier, Mr.
17 Malvo for his cooperation. Found him to be remorseful. Found
18 him to be a different person than he would have appeared to be
19 several years earlier when he was engaged in this pattern of
20 criminal behavior. He also acknowledged the fact that Mr.
21 Malvo, which is not atypical, was under the influence -- and
22 the State acknowledged this at sentencing -- of an older, much
23 more sophisticated criminal actor.

24 If we look, Your Honor, at what the Supreme Court has
25 done since Miller and Montgomery, there are two cases which I

1 know the Court is aware of, and the Adams case. Both are
2 granted, vacated, remanded. Adams and Tatum. And in both of
3 those cases Justice Sotomayor, she concurred in the decisions.
4 She talks about the fact that there is no indication in those
5 cases that the fact finders considered -- that when they
6 considered the petitioners' youth, that they asked the question
7 that Miller required them not only to answer but to answer
8 correctly. And I am paraphrasing. And that is whether the
9 petitioner's crimes reflected transient immaturity or
10 irreparable corruption.

11 So, our position is it is not enough to look at the
12 record and say we could imagine a way that a circuit court
13 judge at sentencing could come to that conclusion. Because
14 that is not the question that was being asked. The law did not
15 exist in 2006 the way it does today. And so if a trial judge
16 were sentencing today, if this Court were sentencing Mr. Malvo,
17 this sentencing proceeding would look, as the Court is aware,
18 very different. And there would be a decision that would need
19 to be made, perhaps it could be made, perhaps not, that a
20 person is irreparably corrupt before any hope at a life outside
21 prison can be cut off.

22 Your Honor, we would ask the Court to grant the
23 relatively limited relief that is sought here. And that relief
24 is a resentencing. At that sentencing Mr. Malvo would have an
25 opportunity through counsel to present witnesses, whether those

1 are lay people, expert witness. He would have a chance to
2 demonstrate any rehabilitation since arrest, which he has
3 already done to Judge Ryan's satisfaction to some extent in
4 terms of the finding that he cooperated with law enforcement.
5 I think it is instructive that he did so without any benefit.

6 That would be the appropriate forum to decide if a
7 person -- and again, if that sentence of life without parole is
8 an available penalty. And I say that with some hesitation
9 because we are not conceding that. We are not conceding that
10 because it is a very difficult thing to image that a trial
11 judge, even with a great deal of information, can predict where
12 a 21-year-old will be when that person is 45, 55, 65, 75 years
13 of age.

14 And that is what we are talking about here. We are
15 talking about that opportunity to even petition for release.
16 And with that, Your Honor, I understand Mr. Butler has
17 something he would like to say -- Mr. Kleinbord would. Perhaps
18 in the interest of time I will submit. I know the Court has
19 all of our materials. I would ask for a few minutes though to
20 respond to their presentation.

21 THE COURT: All right. Thank you, Mr. Johnston.

22 MR. JOHNSTON: Thank you.

23 THE COURT: Mr. Kleinbord, I will hear from you.

24 MR. KLEINBORD: Thank you, Your Honor. I hope the
25 Court will indulge the State a little bit. I know that we are

1 here primarily for legal arguments on the impact of the two
2 Supreme Court cases. But a little bit of background about this
3 case I think is in order. In addition to the assembled media
4 we have several members of the victim's families. And for them
5 the mere possibility that Mr. Malvo might be entitled to a new
6 sentencing hearing tears open some very old and serious wounds.

7 This act was, in the words of my colleague, the
8 prosecutor at sentencing in this case, the worst criminal act
9 ever perpetrated upon our community. It is important to
10 remember that Lee Malvo was 17 years old at the time he
11 committed these crimes. In fact, he was just four months shy
12 of his 18th birthday. He and his accomplice, John Allen
13 Muhammad, terrorized an entire region of this country in a
14 killing spree that lasted three weeks and took the lives of ten
15 innocent people. Montgomery County Maryland was the epicenter
16 of this horrific violence with six of the murders occurring
17 here.

18 Mr. Malvo and Mr. Muhammad committed these murders
19 from the truck of a 1990 Chevy Caprice which was modified to
20 serve essentially as a rolling snipers nest. The back seat was
21 modified to allow a person access to the trunk where they could
22 lay in a prone position and take shots from a small hole near
23 the license plate of the car.

24 The weapon used in all ten of the murders was a Bush
25 Master semi-automatic .223 caliber rifle, which had a muzzle

1 velocity of 3000 feet per second. And the medical examiner
2 testified at the trial of John Allen Muhammad that a .223
3 caliber bullet fired by this weapon would leave a distinctive
4 and extremely devastating injury because the bullet fragments
5 when it hits the body, causing a tremendous amount of damage.

6 As I said, there were six murders in Montgomery
7 County. On October 2nd James Martin was shot in the back while
8 walking to the Shoppers Food Warehouse Store on Randolph Road
9 in Wheaton Maryland. Mr. Martin said, help me, fell to the
10 ground and died almost instantly.

11 On October 3rd, there were four murders that took
12 place within almost two hours of each other, sending the entire
13 law enforcement community into a frenzied manhunt. The first
14 of those was James Sonny Buchanan, who was mowing the law at
15 Fitzgerald Auto Mall on Rockville Pike. He was shot also once
16 in the back from a distance. Clutching his chest, he ran to
17 the parking lot of the dealership where he collapsed and died.

18 30 minutes later Mr. Walekar was fueling his taxi cab
19 at the Mobile Gas Station on Connecticut Avenue in Silver
20 Spring. He was also shot once from a distance. He staggered
21 to a nearby car asking for assistance but died within minutes.

22 At 8:37 a.m., still on October 3rd, Maria Sarah Ramos
23 was sitting on a bench in front of a restaurant at Leisure
24 World Shopping Center in Silver Spring. She was shot once in
25 the head from a distance and died instantly. And again, on

1 October 3rd at 9:58 a.m. Lori Ann Lewis-Rivera was vacuuming
2 her minivan at the Shell station at the corner of Connecticut
3 and Knowles Avenue in Kensington. She was shot once in the
4 back and died from her injury.

5 The final murder and the sixth that occurred in
6 Montgomery County, took place on October 22, 2002. At
7 approximately 6:00 a.m., Conrad Johnson was on board his ride
8 on bus on Grand Pre Road in Silver Spring. He was shot once in
9 the upper abdomen with a bullet that was fired from a distance.
10 He was taken by helicopter to the hospital where he later died
11 during surgery.

12 Mr. Malvo plead guilty to six counts of first degree
13 murder. The plea agreement which is in the court jacket --
14 there is a plea memorandum. He plead to the indictment. Both
15 sides were free to allocute. The State had filed notice of its
16 intent to seek life without the possibility of parole. But of
17 course, under Maryland law Judge Ryan was free to impose a life
18 sentence. He was free to impose a life sentence and suspend
19 part of those life sentences. He was certainly not required to
20 impose a life without parole sentence by either statute or by
21 way of the plea agreement.

22 But Mr. Malvo argues before the Court today, and it
23 is important to note that he did not appeal from his guilty
24 plea. He did not file a petition for post-conviction relief.
25 As he was entitled to both of those avenues of relief. Instead

1 he did file a motion for reconsideration initially, which was
2 denied. But really this is his first challenge to his
3 sentence.

4 He claims that based on the two Supreme Court cases,
5 Miller v. Alabama and Montgomery v. Louisiana, he is entitled
6 to a new sentencing hearing. Because, quote from his motion,
7 there has not been compliance with the procedural component of
8 those case. I think there are really four issues that the
9 Court has to address in this case.

10 The first is, was there even an illegal sentence
11 cognizable under Maryland Rule 4-345(a). That is, is Malvo
12 entitled to relief under the procedural vehicle he has chosen
13 to challenge his sentence.

14 Second, even assuming he can do that, do the Miller
15 and Montgomery cases apply in Maryland. Which, as I said, is a
16 discretionary sentencing regime, not mandatory as in Miller and
17 Montgomery.

18 Third, even if they do apply, do those cases impose a
19 particular fact finding requirement? And I would say that the
20 plain language of Miller and Montgomery makes it clear that
21 they do not require any specific findings on the record or for
22 the sentencing court to recite any magic words. Rather, to
23 comply with this procedural component the sentencing court need
24 only consider a juvenile offender's youth and the attendant
25 characteristics before determining that life without parole is

1 a proportionate sentence. And I would submit that that is
2 exactly what was done in this case.

3 And fourth and finally, even if Miller and Montgomery
4 do apply, it would require a look at what Judge Ryan did in
5 this case. If they do impose a requirement on the sentencing
6 court, did Judge Ryan comply with those requirements? Now,
7 Judge Ryan was --

8 THE COURT: Judge Ryan -- I mean, I must say -- the
9 sentencing itself, not the entire procedure but what Judge Ryan
10 said is roughly two pages of a 19 page -- 18-and-a-half-page
11 sentencing proceeding. There really wasn't a lot other than,
12 as Mr. Johnston has pointed out, he basically commended Mr.
13 Malvo for helping out. He acknowledged that he was a different
14 person. Everyone did.

15 But when it came time to determining whether or not
16 this was really an appropriate sentence his response was
17 basically, you helped out, you testified truthfully. You have
18 changed but you could have been somebody else. You have shown
19 remorse and forgivingness is between you and your god and you
20 and your victims but the community doesn't forgive you. You
21 are going to be held accountable. And here is the sentence.

22 MR. KLEINBORD: Yes. Well, Your Honor, you did not
23 read, I think, one of the most important sentences. I think
24 every word -- although it is not a lot, every word of Judge
25 Ryan's sentence is meaningful and important. And prior to the

1 part that you read Judge Ryan said to Mr. Malvo that, you
2 knowingly, willingly and voluntarily participated in the
3 cowardly murders of innocent, defenseless human beings.

4 And it is not just what Judge Ryan said. It is the
5 procedure that was in place for Mr. Malvo and it is the
6 evidence that was before Judge Ryan. The law is well settled
7 that a sentencing judge is presumed to know and apply the law.
8 Has virtually boundless discretion --

9 THE COURT: But -- I want to stop you there. Because
10 I did read the decision of the U.S. District Court judge in
11 Norfolk, I think it was. And he basically said, you have to
12 impute knowledge back to the date of the sentencing. The
13 knowledge being that you have got to make some sort of a
14 factual finding regarding whether or not this person has the
15 capability of changing in the future.

16 So, even if Judge Ryan is presumed to know the law,
17 and I am sure we can make that presumption, did he know that
18 the law -- or did he have any way of forecasting that some
19 years later the Supreme Court would decide these two cases.

20 And if I am to credit the argument of Mr. Johnston --
21 I am not saying I do, I am not saying I don't -- but if I
22 credit his argument that would have been something that judges
23 typically did not do at the time this sentence was imposed.
24 Right?

25 MR. KLEINBORD: It is true, obviously, that Judge

1 Ryan, though an outstanding jurist, well respected, was not
2 clairvoyant. He could not have known that terms like transient
3 immaturity and irreparable corruption would become part of the
4 lingo that the Supreme Court wanted sentencing courts to
5 address.

6 But this was, as Your Honor has alluded to, this case
7 was unlike any other case that ever came before a member of
8 this Court. And the notion that Judge Ryan would not have
9 considered those factors -- although he did not know the
10 precise terminology -- the notion that he would not have
11 considered Mr. Malvo's youth -- again it was a fact that he was
12 almost 18 years old -- the sheer brutality and unprecedented
13 nature of the crime.

14 I mean, he certainly had enough evidence before him
15 to find -- and I think Malvo cooperating and participating in
16 the Muhammad trial, I think those are factors that actually go
17 to Mr. Malvo being more of an adult. Those are actions that
18 show his -- tend to show his being more of an adult than more
19 of a child and were additional evidence that were before Judge
20 Ryan that he credited to show that this was not a result of
21 transient immaturity. And again --

22 THE COURT: But the measuring point though seems to
23 me is not at the point of sentencing. It is what is going to
24 happen in the future. Isn't that what these two cases tell us?
25 Is that when you -- and again, they were mandatory, this

1 wasn't. They were mandatory sentences.

2 MR. KLEINBORD: Right.

3 THE COURT: But we are -- you have a situation where
4 the judge despite in this case, as I have reviewed, having some
5 reports from psychiatrists --

6 MR. KLEINBORD: Yes.

7 THE COURT: -- Dr. Blumberg, among others. Judge
8 Ryan made no mention of even having read them. I don't think.

9 MR. KLEINBORD: Well, we have to assume that Judge
10 Ryan considered -- I think in any sentencing we assume that the
11 Court, even if they don't articulate that -- and that is
12 consistent with the case law. That they don't have to spell
13 out every reason on the record or that they have considered
14 every piece of evidence before them at sentencing.

15 I think especially in this case we have to presume
16 that Judge Ryan considered everything in the presentence
17 investigation report. Every report. And Mr. Malvo had a team
18 of lawyers and a team of psychologists and psychiatrists
19 marshalled at his behalf.

20 We have to assume that Judge Ryan considered all of
21 that evidence. Every sentencing decision is a calculation
22 about whether the defendant will be -- any time a judge imposes
23 life without parole they are making a determination that this
24 person does not deserve a chance at rehabilitation. Based on
25 the crime, based on their history, based on --

1 THE COURT: Yes, but if Miller --

2 MR. KLEINBORD: -- their age --

3 THE COURT: If Miller says that in the case of a
4 juvenile this is extraordinary -- an extraordinary sentencing
5 procedure to give a juvenile life without parole. That is
6 different than the situation where we just have an adult
7 charged with life without parole and no one has to articulate
8 on the record, I find you cannot be rehabilitated.

9 MR. KLEINBORD: Yes. And I think, Your Honor, here I
10 might go back to Miller and Montgomery themselves and what got
11 us to where we are now.

12 In Miller, the defendant was 14 years old. The
13 Alabama statute at issue mandated for a capital felony murder,
14 which is what the juvenile in the Miller case was convicted of,
15 it mandated that the trial court impose a sentence of life
16 without the possibility of parole.

17 And likewise, in Montgomery, under the Louisiana
18 sentencing statute at issue in that case, the sentence of life
19 without parole was automatic upon the jury's guilty verdict.
20 The Court was required to impose life without the possibility
21 of parole. And the defendant had no opportunity to present
22 mitigating evidence.

23 So that is what animated the Supreme Court's decision
24 in those cases. Was, frankly, states from the deep south who
25 had sentences on the books which required a judge to sentence a

1 14-year-old to life without the possibility of parole. They
2 made it clear, and this answers I think one of the questions
3 you asked of Mr. Johnston, did they -- are all murderers the
4 same?

5 Well, the Supreme Court made it clear -- two things.
6 One is, that it is having a procedure in place for a juvenile
7 to be able to argue for something less than life without the
8 possibility of parole. Which is what we have in Maryland.
9 Which is what we had in Maryland in 2002 when Mr. Malvo was
10 prosecuted. And they make it clear that, yes, it will be the
11 rare individual who shows irreparable harm and cannot be
12 rehabilitated. But those individuals will exist.

13 And for those individuals a sentence of life without
14 the possibility of parole is an appropriate sentence as long as
15 they have a hearing, which Mr. Malvo had, where he could
16 present evidence in mitigation. Where the judge had
17 discretion. Where he could present whatever witnesses. He
18 could allocute. And the fact that this sentencing transcript
19 is brief is not the fault of Judge Ryan. It is not the fault
20 of the State --

21 THE COURT: I am not faulting anybody. I am just
22 saying --

23 MR. KLEINBORD: It's --

24 THE COURT: -- the record that I have to review --

25 MR. KLEINBORD: Again, Mr. Malvo had two very capable

1 lawyers defending him --

2 THE COURT: And let me interrupt you to ask you this.
3 I didn't -- and Mr. Johnston I am going to ask you to address
4 this at the appropriate time. But, what was sort of curious to
5 me, unless I missed it, I didn't hear defense counsel asking
6 for any particular sentence much less, you know, consideration
7 of parole or suspend part of the sentence. Am I correct?

8 MR. KLEINBORD: That is correct, Your Honor.
9 They --

10 THE COURT: He just -- his last paragraph is that
11 he -- Lee Boyd Malvo is not going to be in the community. That
12 is a sad thing, you will have to do it from a prison cell. But
13 he merits a life of value, not a life of shame. But he didn't
14 say, please don't give him life without parole.

15 MR. KLEINBORD: No.

16 THE COURT: I will ask Mr. Johnston about that in a
17 moment.

18 MR. KLEINBORD: That is correct, Your Honor. Again,
19 Mr. Malvo had two attorneys, Mr. Brennan and Mr. Sullivan. Mr.
20 Brennan talked about how it was so important that he assisted
21 authorities. And then Mr. Sullivan, the only thing he asked
22 with respect to the sentence itself was he asked the Court to
23 impose concurrent sentences. Concurrent to each other here in
24 this jurisdiction as well as to concurrent to the sentence of
25 life without parole in Virginia. But, again --

1 THE COURT: Which could mean, give him life without
2 parole but just make it concurrent to Virginia.

3 MR. KLEINBORD: Certainly. Certainly. But they --
4 again, they were -- there was nothing preventing them from
5 making a full plea and hearing in favor of a life sentence. In
6 favor of a life sentence suspended to a term of years. Those
7 were all options before Judge Ryan. And, again, that is what
8 the Supreme Court -- that is all that the Supreme Court
9 requires. Is a procedure at which the defendant can ask for
10 something less than life without parole?

11 I do want to talk a little bit about whether this is
12 even an illegal sentence. Because this is -- the procedure --
13 and this is something that Mr. Butler in his pleading, which I
14 understand the Court has not had the benefit of fully digesting
15 but will --

16 THE COURT: I just got it like a half hour ago.

17 MR. KLEINBORD: Right. But this is a point that Mr.
18 Butler, I think, amplifies in his brief and I think it is
19 important. There is abundant case law on what it means to be
20 an illegal sentence that can be challenged under Rule 4-345(a).
21 And I will cite the Court to the case of State v. Wilkins in
22 particular.

23 The notion of an illegal sentence within the
24 contemplation of the rule deals with substantive law, not
25 procedural law. And what Mr. Malvo is asking for in this case

1 is a new sentencing procedure. They are not saying that the
2 sentence of life without parole is substantively illegal. They
3 can't because it was an appropriate sentence under the statute
4 at the time and still today for first degree murder, which Mr.
5 Malvo was convicted of.

6 And the Wilkins case says that Rule 4-345(a), motion
7 to correct an illegal sentence, is not appropriate where the
8 alleged illegibility did not adhere in the defendants sentence
9 itself. And this is an issue that is not really addressed in a
10 lot of the out of state cases because the defendants in those
11 cases have not challenged their sentence under this kind of
12 vehicle. So --

13 THE COURT: But the Virginia case as I recall --

14 MR. KLEINBORD: It is a motion to vacate the
15 sentence.

16 THE COURT: You have a certain amount of time to
17 correct an illegal sentence and that time had passed. I don't
18 know whether this is considered to be an illegality. But I
19 recall reading that in the Virginia decision.

20 MR. KLEINBORD: But the other thing -- the other
21 thing I would note about the Virginia case, the recent case
22 decided by the Federal District court, is that the Virginia
23 Attorney General has noted an appeal in that case.

24 THE COURT: Yes, I know this.

25 MR. KLEINBORD: So that will be decided by the Fourth

1 Circuit. And, as the Court is well aware, Mr. Malvo has
2 separate federal habeas proceeding in Maryland which Judge
3 Messitte has stayed so that he can exhaust his state court
4 remedy. Which is this.

5 The other thing, just on the topic of pertinent case
6 law. It is important to note that there is no published
7 decision from the Maryland Appellate Courts applying the
8 principals of Miller and Montgomery to life without parole in
9 Maryland. So, and I know the Court is aware --

10 THE COURT: It's a pending case --

11 MR. KLEINBORD: Right. As the State pointed out in
12 its pleading there is a pending case in the Court of Special
13 Appeals. So, again, we would argue that they don't even have a
14 right to challenge the sentence based on the vehicle of a
15 motion to correct.

16 The second issue, and I will try to move through
17 these briefly so that Mr. Butler can address the Court. Do
18 Miller and Montgomery even apply in Maryland? And I have sort
19 of addressed this. Again, our position in our brief is that
20 Miller and Montgomery apply to mandatory life without parole
21 sentences only.

22 And I would cite the Court to Jones v. Commonwealth.
23 Which is the Virginia Supreme Court decision which found that
24 Miller and Montgomery do not apply to a discretionary
25 imposition of life without parole. That decision has been

1 petitioned to the Supreme Court.

2 But this is an issue that has divided courts,
3 obviously, around the country. But there are courts that have
4 found that based on the plain language, the core holding of
5 Miller and Montgomery, it does not apply outside of the
6 statutes at issue in those cases. Which are, again, mandatory
7 imposition of life without parole.

8 THE COURT: Because in those cases the defendant
9 didn't even have an opportunity to say anything.

10 MR. KLEINBORD: Exactly.

11 THE COURT: The sentence was automatic.

12 MR. KLEINBORD: Exactly. Didn't have an opportunity.
13 Couldn't present evidence in mitigation. It was simply -- and
14 the case in Spotsylvania County -- and I have a transcript of
15 the guilty plea hearing in Spotsylvania County for which Mr.
16 Malvo was convicted and sentenced. And that too based more on
17 the fact that the guilty plea -- excuse me, the plea agreement
18 in that case was sort of an agreement to life without parole.

19 There was absolutely no allocution. There was no
20 argument by defense counsel in that case. It was simply the
21 Court went through the guilty plea colloquy and then said, I
22 accept the plea agreement. Moved right into sentencing and
23 then just imposed life without parole sentences. So, again,
24 this stands in stark contrast to the sentencing hearing in this
25 case.

1 So, the third issue is, if Miller and Montgomery do
2 apply, do they impose a particular fact finding requirement?
3 Again, we make clear in our brief that the Supreme Court itself
4 in Montgomery said that Miller does not require a finding of
5 fact regarding a child's incorrigibility or irrevocable
6 corruption..

7 The Court stated that they were adopting a new
8 substantive rule of constitutional law. And that when the
9 Court does that they are careful to limit the scope of any
10 attendant procedural requirement to avoid intruding more than
11 necessary upon the states sovereign administration of their
12 criminal justice system.

13 So, essentially what the Supreme Court is saying is,
14 this is the substantive rule of law that we are announcing
15 here. That a juvenile cannot be sentenced to life without
16 parole unless they have a meaningful opportunity to argue for
17 something less. And the Court is free to do that under the
18 statute. We are not requiring any particular procedural
19 requirements because that -- states are free to do that on
20 their own. So, here is what we are saying, now states you
21 figure it out and those issues will be worked out as in every
22 Supreme Court case by the 50 states.

23 So, all that is necessary, again, under Miller and
24 Montgomery is a hearing at which the court can consider a
25 juvenile offenders youth and attendant characteristics before

1 determining whether life without parole is a proportionate
2 sentence.

3 And in this case, again, for the reasons that I have
4 discussed, it is clear from Judge Ryan's comments, again, that
5 he knowingly -- that Malvo knowingly, willingly and voluntarily
6 participated in the cowardly murders of innocent, defenseless
7 human beings. That the State in its comments to the Court made
8 it clear that Mr. Malvo was -- again, that this was the worst
9 criminal act ever perpetrated upon our community.

10 It was done by a 17-year-old without mental defect
11 and this defendant must bear full responsibility for his
12 criminal actions. And for that reason, the State asked for the
13 maximum sentence allowed by law in this case. Which was six
14 consecutive sentences of life without the possibility of
15 parole.

16 I would add that the Court also heard from several of
17 the victims in this case. One of whom, Victoria Snyder, is
18 present in the courtroom today. And her -- and the victim
19 impact statements were before Judge Ryan and informed whether
20 Mr. Malvo should be sentenced to life without parole.

21 And what Ms. Buchanan said is that, I have watched
22 Lee Malvo express enjoyment of killing, to feeling bad about
23 it. To admitting to killing my brother Sonny, to denying it.
24 Muhammad and Malvo, both cowards and murderers. Both shot
25 innocent people going about their daily lives. You, Malvo,

1 hunted them down and shot them. In Sonny's case, in the back.
2 I say to you Mr. Malvo, you are old enough to know right from
3 wrong. Mr. Malvo, you committed these murders --

4 THE COURT: Ma'am, excuse me. Put down the soda or
5 whatever it is. There is a sign right outside. If anybody has
6 any beverages or telephones they need to be off. And no
7 beverages are allowed in this courtroom. I am sorry, go ahead.

8 MR. KLEINBORD: I am sorry, Your Honor. She says to
9 Mr. Malvo, you hunted them down and shot them. In Sonny's
10 case, in the back. I say to you, Mr. Malvo, you are old enough
11 to know right from wrong. Mr. Malvo, you committed these
12 murders as well as many more precious lives that you have taken
13 away. But you will have your life to think about it.

14 And so, again, I would let Mr. Butler address the
15 Court. But, again, the mere possibility of a new sentencing
16 hearing is a frightening prospect to the victims in this case.

17 The State strongly urges the Court to find that Mr.
18 Malvo had a sentencing hearing that complied with Miller and
19 Montgomery. That Judge Ryan found the facts that needed to be
20 found in order to impose a life without parole sentence that
21 complies with the Eighth Amendment. And that the Court denies
22 Mr. Malvo's motion to correct an illegal sentence in this case.

23 THE COURT: All right. Thank you, Mr. Kleinbord.

24 MR. KLEINBORD: Thank you.

25 THE COURT: Mr. Butler?

1 MR. BUTLER: Thank you, Your Honor. First up, I know
2 that the Court has not read our memo because it was just filed
3 and we were just retained. But I would just incorporate that
4 to try to reduce the remarks. And I am sure that the Court
5 will look at that.

6 One of the things that Mr. Malvo says is, is life
7 without parole for any juvenile offender an appropriate remedy?
8 And their position, that they will not concede, that it is not
9 appropriate in any case. And I think that question is answered
10 by the Supreme Court in Miller and Montgomery, saying that life
11 without parole is an appropriate sentence. So, I think that
12 question is resolved.

13 Now the resolution of that question is important.
14 And it is important because of the procedural vehicle that Mr.
15 Malvo has challenged. Which is a motion to correct illegal
16 sentence.

17 As Mr. Kleinbord said, that is very narrow under
18 Maryland Law. And procedures are not considered. It has to be
19 basically per se. So, if the defense is wrong -- if Mr. Malvo
20 is wrong that it is per se allowable, it is not an illegal
21 sentence and cannot be corrected.

22 Now, in other states -- maybe some other states use
23 motions to correct illegal sentence because they don't have the
24 procedural vehicle. I know you mentioned Virginia. And I
25 think that is true in Miller and Montgomery. But in

1 Maryland --

2 THE COURT: I mentioned also that Judge Cahill in the
3 Baltimore County trial court level -- of course this is the
4 case that is on appeal -- he did find that it is an appropriate
5 vehicle by which to challenge. I haven't read it in detail
6 but --

7 MR. BUTLER: And that is one of the issues that is
8 also being briefed before the Court of Special Appeals.

9 THE COURT: Yes. In that case.

10 MR. BUTLER: In that case.

11 THE COURT: Yes.

12 MR. BUTLER: I would say, however, in Maryland, Your
13 Honor, we have Criminal Procedure Article 7-106(c), and that
14 deals specifically when a court has found unconstitutionality
15 of a sentence and there is retroactivity. And that can be
16 filed at any time.

17 That is the correct procedural vehicle in Maryland.
18 Especially, as in here where they are arguing about procedure.
19 What the Court did or did not consider to be consistent with
20 the dicta. Not the finding, not the holding. The holdings
21 is -- Your Honor has said that a mandatory life without parole
22 sentence is improper.

23 But we don't have that in Maryland. We have the
24 ability for life without parole. We have the ability of life.
25 We have the ability of a suspended sentence to have part of

1 that. The judge has the option.

2 One of the cases that I would like -- that is in our
3 brief that I would like to point out, is Fairbanks v. State.
4 And it goes to the question about the judge and did the judge
5 basically -- no magic words. The judge couldn't have used
6 those magic words about irreparable corruption and transient
7 immaturity because they didn't exist in our lexicon then. But
8 did the Court basically -- when it did its sentence, did the
9 Court do that? If you do look at this on the merits, did it
10 comply with that dictum?

11 And I think you have to look -- one of the things,
12 going back and looking at the plea hearing there was discussion
13 about the presentence report that was completed in Virginia.
14 No, no that wasn't good enough. We want them to look at that
15 but we wanted them to do another one in Maryland. And it is
16 very clear at the sentencing transcript that the Court talked
17 to the parties, asked the defendant, Mr. Malvo, and his team
18 did they agree with what was in there?

19 So, I think the Court when it imposed sentence is
20 imputed to have knowledge of everything that is in the
21 presentence report. I have not seen the one in this case. But
22 having seen many in the days, they look at these issues about
23 the defendant's mental health, the defendants prior record, the
24 conduct.

25 And so, the Court when it holds sentencing and it

1 reviews the presentence report -- and I would say that in any
2 life without parole case in Maryland you cannot just go from
3 the trial to the sentencing. Maryland law requires that there
4 be a separate sentencing procedure. The reason that there is a
5 separate procedure is because of the severity of this and the
6 need for the Court because of the penalty.

7 There is nothing in Miller and Montgomery that says
8 that the determination of those issues cannot be made at the
9 time that the Court imposes sentencing. No judge has a crystal
10 ball but they are considering all those factors as to whether
11 there should be life without parole, life with parole, life
12 with parole suspended. That is what courts do all the time.

13 One of the cases that I think is important that
14 hasn't been mentioned is the very recent Supreme Court case in
15 Virginia v. LeBlanc from June 12th. And I think the importance
16 of that is it refutes the argument that states cannot have
17 their own procedures.

18 Virginia has a much more -- provision that it is
19 automatically life without parole except if they have this
20 geriatric release. And the lower courts have said, no
21 geriatric release is different than regular parole. But what
22 the Supreme Court said is, no, that procedure that they have in
23 Virginia and the availability of that is sufficient.

24 So, I think that if you were to take Mr. Malvo's
25 argument you can basically say that any sentence of anybody

1 unless they follow these, you know, magic words, is illegal.
2 And it's not. At most it is a procedural error. It is a
3 procedural error that in Maryland, if it is to be corrected if
4 there is an error, is under 7-106(c) of the Criminal Procedure
5 Article.

6 A couple other points, Your Honor, if I may. Court's
7 indulgence. If there is a case, Your Honor, if there is a case
8 that is the rarest of rare, this is the case. I think it is
9 obvious from the facts of this case. That I think that most
10 any judge would agree that the nature of this and how rare it
11 is -- there have not been that many life without parole
12 sentences for those under 18 in Maryland.

13 And I think the judges in Maryland have done their
14 job. They have looked and determined under Maryland -- and the
15 federal government because of federalism cannot tell Maryland
16 how to run its criminal justice system. And I think that is an
17 important part of this system.

18 But Maryland has a system for judges to use
19 appropriate discretion. That discretion did not apply in
20 Miller and Montgomery. It clearly applied to Judge Ryan. And,
21 as I said, he heard the case. He listened to the argument of
22 counsel. They asked for concurrent time.

23 My guess is counsel did not want to make any requests
24 that would seem so outrageous it would be impossible. I know
25 sometimes defense counsel will make arguments hoping, well if I

1 say this low maybe they will do something in the middle. But I
2 think counsel wanted to be credible to the Court at sentencing.
3 I think that asking for concurrent time was probably reasonable
4 under the circumstances of the facts of this case.

5 THE COURT: But surely it is a distinction without a
6 difference. Because whether he got six consecutive life
7 without parole or six concurrent, it is life without parole.

8 MR. BUTLER: It is. It is. But obviously, Your
9 Honor, both of those counsel -- and I think Mr. Trainor was
10 also counsel at one point even before that -- are exemplary
11 counsel.

12 THE COURT: Sure.

13 MR. BUTLER: I mean, Judge Sullivan now is a member
14 of the bench. I think it would be hard to criticize anything
15 that they did.

16 THE COURT: I wasn't doing that. I mean, I am
17 just -- and I will have Mr. Johnston respond to this. If
18 Miller says that we need to sort of go back to the day of
19 sentencing. And on the day of sentencing counsel doesn't ask
20 for anything other than concurrent life without parole. Which
21 is in effect what I think happened here. I don't know if they
22 said that, but they just asked that any sentence be -- how can
23 counsel complain later on that something that they asked for
24 they didn't get? Which would have been life with parole? I
25 will ask Mr. Johnston that in a second but --

1 MR. BUTLER: I think it relates back to those
2 jurisdictions that had mandatory -- where there was no
3 discretion possible.

4 THE COURT: Yes. And there was here.

5 MR. BUTLER: In Maryland there was discretion
6 possible. The Court heard from counsel. As I said before, I
7 think one of the most important things that the presentence
8 report -- I will tell you that there is another case that is
9 probably now before the Court of Special Appeals from Howard
10 County -- I don't know if you have appealed yet -- but Young.
11 And one of the factors that the Court there in determining was
12 the presentence report.

13 I think it is very important because it is part of
14 the structure. Having a separate sentence for life without
15 parole. Requiring, mandating the presentence report. Having
16 the Court consider that. Maryland structure is not an absolute
17 thou shall receive life without parole, no chance of ever
18 getting out, goodbye. Which was in those other jurisdictions.

19 So, I think that Maryland law more than meets the
20 dicta. Clearly it meets the holding of Miller and Montgomery.
21 But I think it also more than sufficiently meets the dicta of
22 Miller and Montgomery.

23 And with that, Your Honor, if you don't any other
24 questions, I will submit.

25 THE COURT: Thank you, sir. All right, Mr. Johnston?

1 MR. JOHNSTON: Your Honor, I have a few things I
2 would like to say.

3 THE COURT: Sure.

4 MR. JOHNSTON: I appreciate the Court's time this
5 afternoon. Your Honor, I wanted to make sure that we have in
6 the court file, we reference the plea which occurred before
7 Judge Ryan on October 10, 2006 and the sentencing which is
8 November 8, 2006. I want to make sure we have those in the
9 court file?

10 THE COURT: Yes.

11 MR. JOHNSTON: Very well. So, in the event this is
12 reviewed by an appellate court we would have that available to
13 us.

14 Your Honor, I think it is interesting Mr. Kleinbord
15 mentioned the Virginia proceeding in 2004 where Mr. Malvo
16 entered a guilty plea. He was subject had he not done that to
17 a potential capital sentence. 2004 is one year before the
18 Supreme Court outlawed capital punishment for any juvenile
19 offender no matter the offense. And certainly it was only
20 homicide at that point.

21 I would like to say a few things. First of all, I
22 read LeBlanc very differently than Mr. Butler. I would ask the
23 Court to read it differently. It is an interesting case, it is
24 a per curiam decision. It deals with habeas and deference.
25 And LeBlanc says more about what the Supreme Court has not done

1 for non-homicide juvenile offenders than it does about what the
2 Supreme Court has decided yet.

3 And the language in LeBlanc -- and the Court has read
4 it, we sent a copy to chambers a few days ago. The language in
5 LeBlanc says from the federal habeas stand point much of this
6 is undecided. We haven't reached that issue yet so we can
7 authorize or we need to authorize deference and maintain
8 deference to the state appellate courts. That is what LeBlanc
9 is about. That is not what this case is about.

10 I think it is interesting because there has been much
11 discussion here about, well Mr. Malvo had many lawyers. He had
12 many psychiatrists, he had many psychologists. He had many
13 good psychiatrists and psychologists. He had many excellent
14 lawyers.

15 What would Mr. Brennan, if he were hear today at
16 counsel table and we were having a sentencing for Mr. Malvo,
17 what would he have asked for? And would he have insisted on a
18 finding of irreparable corruption before the judge, or jury
19 potentially. If it is a fact finding question moved on to the
20 decision, if eligible, is this an appropriate sentence?

21 I would like to say first a few things about the
22 procedural vehicle that we are here on. Every state has a
23 different process for post-verdict relief. Some states only
24 have habeas corpus. We have a statutory post-conviction
25 authority and we also have a rule based ability to petition the

1 Court at any time when a sentence is illegal. The sentence
2 here -- the illegality adheres in the sentence. The fact that
3 Mr. Malvo can use the rule --

4 THE COURT: What is the illegality now?

5 MR. JOHNSTON: The illegality --

6 THE COURT: It was a perfectly legal sentence.

7 MR. JOHNSTON: We would challenge that. In part, and
8 this was referenced by opposing counsel, it is difficult to
9 imagine a circumstance where a trial judge can reliably, writ
10 large, determine if an individual up front -- a person may be
11 15, 16, 17 years of age, is irreparably corrupt.

12 It is difficult to imagine a constitutional process
13 of fact finding that frankly allows that to even happen. But
14 in this case the unconstitutionally adheres in the sentence
15 when the sentence is not informed by the adequate consideration
16 of youth. Where youth is not given the weight that the Supreme
17 Court has required.

18 Now, indeed the Supreme Court defers to state court
19 criminal procedures. And the fact that other procedures may be
20 available -- some states have created --

21 THE COURT: Let me stop you.

22 MR. JOHNSTON: I am sorry.

23 THE COURT: So, I think, and I may be mistaken. But
24 I think at the very least, whenever I sentence a criminal
25 defendant in a circuit court case I have got to prepare

1 sentencing guidelines and I have got to take them into
2 consideration. They don't bind me in any way.

3 MR. JOHNSTON: I would agree.

4 THE COURT: Okay. Suppose I say, I am not preparing
5 guidelines in this case. I know what the sentence is going to
6 be. And I go ahead and I sentence and I say, I don't care what
7 the guidelines say, I am not taking them into consideration.
8 Is that under your analysis an illegal sentence?

9 MR. JOHNSTON: For an adult offender?

10 THE COURT: Yes.

11 MR. JOHNSTON: No. And I believe there is a case
12 with Judge Wright from Washington County. Where Judge Wright's
13 policy was at the time that he believed that the guidelines for
14 narcotics offenses were too low. And so he sentenced -- and he
15 listened, obviously, in each individual case. But his policy
16 was essentially to impose a higher range of penalties. And the
17 appellate court, if I recall correctly -- I don't have the case
18 in front of me -- did not have an issue with that.

19 THE COURT: Okay. So, why is that any different?
20 You say the illegality adheres in the sentence because it is
21 not an informed sentence so therefore it is illegal. So, my
22 sentence by the same token would be uninformed because I am
23 disregarding what other judges have done across the state in
24 just disregarding the guidelines.

25 MR. JOHNSTON: Well the adult offender in your

1 analysis does not have a constitutional right to a finding that
2 he or she is irreparably corrupt. And does not fall into that
3 larger pool of homicide offenders who are juveniles who are not
4 eligible for life without parole. It is according to the
5 Supreme Court an illegal sentence for everyone who is not
6 irreparable corrupt and whose irretrievable depravity does not
7 put them into that rare category.

8 We have multiple ways of attacking a sentence in
9 Maryland. This is one of them. And certainly the motion to
10 correct illegal sentence is open to new constitutional changes
11 that occur post-sentencing. Otherwise an individual would have
12 no ability to access the courts. And we believe that this is
13 the appropriate vehicle to be here.

14 I will point out, since it was referenced earlier,
15 the other proceedings that have been going on around the state.
16 I know Mr. Butler referenced a Howard County case that will
17 shortly be on appeal to the Court of Special Appeals. But the
18 Attorney General's Office has not taken the position that this
19 is the wrong vehicle. They may disagree with the relief in
20 individual cases but I don't believe the fight is with the
21 vehicle. The fight really is on the second issue that we have
22 spent a great deal of time discussing this afternoon.

23 The State again, Your Honor, in asking to focus on
24 the severity of the offense is really asking to look at Judge
25 Ryan's decision now 11 years later. And to decide based on

1 factors that were not before him, that were not in the record
2 before him, to continue with that sentence.

3 It is not simply that the information was available.
4 And I think that is an important point. Because under Mr.
5 Kleinbord and Mr. Butler's theory, if you have the following
6 things every sentence for a juvenile homicide offender of life
7 without parole is legal. One, you need the ability to impose a
8 different sentence. And you need the ability to present
9 mitigation. Those are the two things that they believe you
10 need to have. After that, every sentence is legal.

11 But if we look at Adams v. Alabama and we look at
12 Tatum v. Arizona, that cannot stand. It is considering and
13 giving weight to youth as a mitigator. And to the idea that a
14 person is essentially presumed to be corrigible. By being
15 under the age of 18, even as a homicide offender, a person is
16 presumed to have the capacity for change, the ability to
17 change. And only those rare individuals who, one, have
18 committed homicide offenses, where they killed or intended to
19 kill. And, two, have demonstrated on the day of sentencing
20 that they have no hope for change, no hope for rehabilitation.

21 That is the narrow universe of individuals who could
22 receive life without parole. Nothing requires a court to
23 sentence a person to life without parole simply because the
24 court finds that they are irretrievable corrupt.

25 The last thing I would like to say, Your Honor, deals

1 with retribution. I think that was an important component of
2 Judge Ryan's sentence. I think it is fair to say that after
3 reviewing the record. That retribution, that punishment, that
4 expressing the outrage of the community played a large part in
5 informing his sentence.

6 What Miller and Montgomery do is they don't remove
7 retribution as a component but they temper retribution by
8 acknowledging that youth itself is a critical factor in the
9 sentencing determination. And in fact, must be given adequate
10 weight. We don't have that here.

11 If we read Judge Ryan's sentencing, again, he was not
12 asked to make this decision today. He was asked to make a
13 decision in 2006 with the law that applied. As the Court
14 referenced a Virginia habeas decision which undoubtedly will be
15 heard by the Fourth Circuit in the coming months.

16 But I think it is instructive. Virginia -- in that
17 decision Judge Jackson acknowledged that Virginia has the
18 ability to suspend a sentence. That a Virginia trial court
19 judge does. So he looked at it as a discretionary sentencing
20 regime and nonetheless found Mr. Malvo eligible for federal
21 habeas relief.

22 And with that, Your Honor, we would submit unless the
23 Court has any additional questions. I appreciate the Court's
24 time. I know there are a number of other very important
25 matters on the docket. Thank you.

1 THE COURT: All right. Thank you for a very well
2 briefed case. And I will take this under advisement and get
3 something out to you soon.

4 MR. JOHNSTON: Thank you, Your Honor.

5 MR. KLEINBORD: Thank you, Your Honor.

6 MR. BUTLER: Thank you, Your Honor. Have a good day.

7 (The proceedings were concluded.)
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√ Digitally signed by Ashley Klinglesmith

DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC. hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Circuit Court for Montgomery County in the matter of:

Criminal No. 102675

STATE OF MARYLAND

v.

LEE BOYD MALVO

By:



Ashley Klinglesmith
Transcriber

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

STATE OF MARYLAND :
 :
 v. : Case No. 102675-C
 :
 LEE BOYD MALVO :
 :
 Defendant :

MEMORANDUM OPINION AND ORDER

This case came before the court on June 15, 2017, for a hearing on Defendant's Motion to Correct Illegal Sentence. The court heard oral argument from both parties and victim representative's attorney Russell P. Butler, Esq. In reaching its decision, the court has considered those arguments, memoranda submitted, and applicable case law.

The facts of the underlying case are best described by Judge Charles E. Moylan, Jr., in *Muhammad v. State*, 177 Md. App. 188, 198 (2007), who compared it to that of the notorious Jack the Ripper:

For 22 days in October of 2002, Montgomery County, Maryland was gripped by a paroxysm of fear, a fear as paralyzing as that which froze the London district of Whitechapel in 1888. In Whitechapel, however, the terror came only at night. In Montgomery County, it struck at any hour of the day or night.... In Montgomery County, every man, woman, and child was a likely target. The body count in Whitechapel was five; in Montgomery County the death toll reached six. The name of the Whitechapel terrorist has never been discovered. In Montgomery County, their names are John Allen Muhammad and Lee Boyd Malvo.

Judge Moylan continued:

Although the reign of terror perpetrated by Muhammad and Malvo ultimately spread over seven separate jurisdictions and involved 10 murders and 3 attempted murders, the epicenter was unquestionably Montgomery County. Six of the ten murders were committed in Montgomery County. The terror began in Montgomery County on Wednesday evening, October 2, 2002. The terror ended in Montgomery County on Tuesday evening, October 22, 2002....

Seized with epidemic apprehension of random and sudden violence, people were afraid to stop for gasoline, because a number of shootings had

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Clerk of the Circuit Court
Montgomery County, Md.

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occurred at gas stations. Schools were placed on lock-down status. On one occasion, Interstate 95 was closed in an effort to apprehend the sniper. A multi-jurisdictional state and federal task force was formed to cope with the crisis. "Hot lines" to receive tips were created by both the Montgomery County Police Department and the Federal Bureau of Investigation. Over 60,000 tips were ultimately received. The sense of dread that hovered over the entire community was immeasurable. The six lives that were taken were but a part of an incalculable toll. *Id.* at 200.

Ultimately, Malvo and Muhammad were located and arrested near Frederick, Maryland. It was discovered that the automobile in which the two had traveled had been fashioned into a mobile sniper's nest, with a hole carved out of the trunk through which the muzzle of a Bushmaster .223 rifle, the murder weapon in each of the homicides, could protrude. The trunk was large enough to accommodate either of the co-defendants, who could lie prone and wreak their havoc. Testimony at trial showed that the Bushmaster .223 propels a shell at a speed of 300 feet per second, causing devastating injury. According to the state's proffer at the time of Defendant's guilty plea on October 10, 2006, there were at least six other shootings in the District of Columbia, Louisiana, Arizona, and Alabama, resulting in at least four deaths for which Malvo and Muhammad were also responsible.

Muhammad was convicted of first degree murder in both Maryland and Virginia. During Muhammad's trial in Montgomery County, Malvo provided testimony against his accomplice. He also admitted to lying during his testimony in Virginia in order to potentially spare Muhammad from the death penalty. On November 9, 2009, Muhammad was executed via lethal injection for the murders he committed in Virginia.

Malvo was convicted by a Chesapeake County, Virginia, jury on two counts of capital murder and one count of using a firearm during the commission of a felony. Under Virginia law, he was not eligible for parole. He also pled guilty in Spotsylvania County to one count of capital murder, one count of attempted murder, and two counts of using a firearm in the commission of a felony. He received life-without-parole on the murder charges.

In the instant case, Defendant entered a plea of guilty to six counts of first degree murder. During his sentencing hearing in Montgomery County, on November 9, 2006, the Assistant State's Attorney acknowledged that the "defendant has changed," and that he had "grown tremendously since [the time of the murders]."

Sentencing Judge James L. Ryan had previously been provided with Victim Impact Statements from the decedents' families; a Pre-Sentence Investigation report, prepared by an

agent of the Maryland Department of Parole and Probation, to which was attached a letter from Malvo's attorneys; a psychiatric forensic evaluation report by Neil Blumberg, M.D.; and a report prepared by Carmeta Albarus, a licensed social worker, and Denese Shervington, M.D., a forensic psychiatrist. These reports discussed in detail Malvo's upbringing, family life, and how he became associated with co-defendant Muhammad. Judge Ryan was informed that Malvo had earned a high school diploma while in prison; was enrolled in college courses; had a family history of mental disorders; and needed therapy to prevent his suffering from a range of mental disorders while incarcerated. Finally, a pre-sentence report from Virginia, dated March 1, 2004, was also included among the documents for the sentencing judge's review. In that report, Malvo expressed no remorse for the victims or their families.

In addition to the materials provided to Judge Ryan for sentencing, he had the opportunity to hear Malvo's testimony and observe his demeanor at the trial of his co-defendant Muhammad. Malvo's testimony at that trial, with Judge Ryan presiding, described in detail the plot to kill innocent persons in Montgomery County, took up 468 pages of the trial transcript and lasted for most of two days. *Muhammad, supra*, at 218.

At sentencing, Malvo's counsel pointed out that his client had assisted Maryland and Virginia prosecutors, as well as authorities in Arizona, where another shooting victim resided. His co-counsel requested the court to impose concurrent sentences for the six murders, conceding that Malvo would be "locked in a cell for the rest of his life," but that "he has a future, and he'll have to do it from a prison cell in Virginia." Defendant himself described the "stark difference between who I am today and who and what I was in October of 2002," and expressed remorse for his actions.

Judge Ryan noted the assistance Malvo had provided to authorities, saying: "It appears you've changed since you were first taken into custody in 2002." Nevertheless, in his concluding remarks, Judge Ryan observed: "You've shown remorse and you've asked for forgiveness. Forgiveness is between you and your God, and personally, between you and your victims, and the families of your victims. This community, represented by its people and the laws, does not forgive you." Shortly thereafter, Defendant, then 21 years old (although 17 years and eight months at the end of his criminal rampage), was sentenced to six consecutive life-without-parole sentences, consecutive to any other sentences (namely, those in Virginia) then being served.

After sentence was pronounced, Defendant signed a "Notice to the Defendant," informing him that he had the right to file a written request to have his sentence reviewed by a three-judge panel, and also the right to ask the trial court to reconsider his sentence (DE 61). Since he received the maximum sentence, a three-judge panel could only reduce his sentence or keep it the same. Judge Ryan, on a motion for reconsideration, could likewise only reduce the sentence or uphold it. No three-judge panel sentence review was ever requested, and no such hearing was held.

On November 27, 2006, Defendant filed a Motion for Modification or Reduction of Sentence under MD. R. 4-345. That rule permits the trial court to reconsider its sentence for a period of five years. He requested that the motion be held in abeyance until such time as a hearing was requested, and averred that the motion would be supplemented "with information regarding his current status and the basis...to modify and/or reduce the sentence of six consecutive sentences of life imprisonment without parole...." (DE 66).

By order docketed on December 20, 2006, the court agreed to hold the motion in abeyance. No supplements were ever filed by Defendant, however, nor was there a request for hearing. Therefore, on September 18, 2012, the court denied the Motion for Modification or Reduction of Sentence, as it no longer had jurisdiction to grant relief because of the passage of more than five years.

On June 25, 2012, the Supreme Court issued its opinion in *Miller v. Alabama*, 567 U.S. 460 (2012), holding that mandatory life imprisonment without parole for juveniles in most cases violates the Eighth Amendment's prohibition on cruel and unusual punishment. The court ruled that such a penalty is acceptable only in the most uncommon of cases after the sentencing court has determined that the juvenile is "irreparably corrupt[ed]." *Id.* at 479-80. Then, in *Montgomery v. Louisiana*, 577 U.S. ___, 136 S. Ct. 718 (2016), the Court provided that this substantive right applies retroactively.

In *Malvo v. Mathena*, 2017 WL 2462188, decided on May 26 of this year, the United States District Court for the Eastern District of Virginia vacated and remanded Malvo's Virginia state sentences, asserting *inter alia* under Note 5 of the slip opinion: "This Court need not determine whether Virginia's penalty scheme is mandatory or discretionary because this Court finds that the rule announced in *Miller*... applies to all situations in which juveniles receive a life-without-parole sentence." The court is informed that the case is now on appeal to the Fourth Circuit.

In light of the holdings in *Miller* and *Montgomery*, Defendant asks this court to correct an illegal sentence pursuant to Eighth Amendment jurisprudence and Article 25 of Maryland's Declaration of Rights ("Article 25"). For the reasons articulated below, Defendant's motion is denied.

Defendant's Motion to Correct Illegal Sentence

Defendant raises three allegations that he believes entitle him to be resentenced. First, he argues that *Miller* and *Montgomery* apply to Maryland's *discretionary* life-without-parole sentencing scheme. Second, it is contended that the provisions of Maryland law requiring a life sentence for homicide offenders violates the Eighth Amendment of the United States Constitution ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."), and Article 25 of the Maryland Declaration of Rights ("That excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted, by the Courts of Law."). Finally, Defendant contends that the Declaration of Rights provides an alternative state law grounds upon which a court must conclude that his sentences are invalid and illegal.

a. Miller/Montgomery Applies to Maryland's Discretionary Sentencing Scheme and Mandates a New Sentencing Hearing.

Despite Maryland's discretionary life-without-parole sentencing scheme, Defendant avers that his sentences are illegal under *Miller* and *Montgomery*, because the Supreme Court has specifically stated that such a sentence is not permitted by the Constitution unless the juvenile offender has been found to be "irreparably corrupt." *See also Williams v. State*, 220 Md. App. 27, 43, *cert. denied*, 441 Md. 219 (2015) (enhanced penalty improperly imposed is an illegal sentence and may be corrected at any time). He essentially argues that *all* pre-*Miller* life-without-parole sentencings for juveniles fail to meet the standard later announced by *Montgomery*. This is because the Eighth Amendment requires specific consideration of whether the juvenile's crime reflects transient immaturity. *Montgomery, supra*, 136 S. Ct. at 734. *See also McKinley v. Butler*, 809 F.3d 908, 911 (7th Cir. 2016) (even discretionary life sentences must be guided by consideration of age-relevant factors).

That Maryland has a discretionary sentencing scheme is of no consequence, argues Defendant; the substantive rights of children are to be procedurally protected in all states. Defendant posits that the Supreme Court has recently attempted to further explain its holdings in *Miller* on this point. In *Adams v. Alabama*, 136 S. Ct. 1796 (2016), the court vacated and remanded the defendant's case for reconsideration in light of *Montgomery*. In a concurring opinion, Justice Sotomayor emphasized that pre-*Miller* courts, even when handing down discretionary sentences, have "not [had] the benefit of [the Supreme Court's] guidance regarding the diminished culpability of juveniles; and the ways that penological justifications apply to juveniles with lesser force than to adults." *Adams, supra*, 136 S. Ct. at 1800.

Further, Defendant notes that more states are finding that *Miller* applies to discretionary sentencing schemes and invalidating existing life without parole sentences. See *Veal v. State*, 784 S.E. 2d 403 (Ga. 2016) (discretionary life without parole sentence for a minor was illegal because the court did not make a "specific determination that he is irreparably corrupt"); *State v. Valencia*, 370 P. 3d 124 (Ariz. 2016) (discerning that the key feature of *Miller* and *Montgomery* was whether the court took into account how children are different and how those differences counsel against irrevocably sentencing them to lifetime in prison); *Luna v. State*, 2016 OK CR 27, ¶ 14 (applying *Montgomery* and *Miller* to Oklahoma's discretionary sentencing scheme). Like the defendant in *Montgomery*, Malvo requests that he be given the opportunity to show that his crime "did not reflect irreparable corruption." *Montgomery, supra*, at 736-37.

b. Maryland's Homicide Sentencing Scheme is Illegal

Defendant additionally complains that the State's sentencing scheme for juvenile homicide offenders is illegal because a sentencing judge is required to impose a life sentence upon conviction for murder in the first degree, regardless of age or circumstances. See MD. CODE ANN., CRIM. LAW § 2-201. He notes that no statutory guidance exists to assist the sentencing court when imposing a life sentence. The Governor has discretion to deny parole to an inmate serving a life sentence, and there are no established standards taking into account the special circumstances of a juvenile. Accordingly, Defendant characterizes Maryland's sentencing scheme as mandatory, in violation of *Miller* and *Montgomery*.

c. Alternative State Grounds

Defendant believes that *Miller* leaves open the question of whether the Eighth Amendment requires a categorical ban on juvenile life without parole in all cases, as evidenced by its statement that “[b]ecause our holding is sufficient to decide these cases, we do not consider . . . [the] alternative argument that the Eighth Amendment requires a categorical ban on life without parole for juveniles, or at least for those 14 and younger.” 567 U.S. at 479. Accordingly, he concludes that consideration of Article 25 of the Declaration of Rights demonstrates that Defendant’s sentences constitute cruel and unusual punishment. *But see Dua v. Comcast Cable*, 370 Md. 604, 621 (2002) (holding that a Maryland constitutional provision will not always be interpreted or applied in the same manner as its federal counterpart).

d. Rule 4-345 Motion for Reconsideration of Sentence

Defendant asserts that his six life-without-parole sentences are illegal pursuant to the Eighth Amendment prohibition on cruel or unusual punishment as explicated in *Miller* and *Montgomery*, and that the court may correct an illegal sentence at any time. MD. RULE 4-345(a). Such a correction can occur even if: “(1) no objection was made when the sentence was imposed; (2) the defendant purported to consent to it; or (3) the sentence was not challenged in a timely-filed direct appeal.” *Chaney v. State*, 397 Md. 460, 466 (2007). An illegal sentence is one that is “not permitted by law” or otherwise “constitutionally invalid in any other respect.” *State v. Wilkins*, 393 Md. 269, 273-75 (2006).

State’s Response

Because the Supreme Court’s holding in *Miller* explicitly referred to mandatory juvenile life-without-parole sentences, the state avers that the case does not apply where such a penalty is discretionary. Alternatively, the state asserts that even if the analysis is the same for mandatory and discretionary life-without-parole sentence, the trial court fully complied with the current standard for sentencing juvenile offenders.

a. *Miller and Montgomery Apply Only to Mandatory Sentencing Schemes*

The state objects to the suggestion that *Miller* and *Montgomery*, which are cases involving mandatory life-without-parole sentencing schemes, apply to the discretionary sentencing permitted in Maryland. It avers that it was the mandatory nature of the sentence that violated the Eighth Amendment in *Miller* and *Montgomery*, because such a procedure eliminates the opportunity for the defendant to present, and for the court to consider, mitigating evidence. *Miller*, 567 U.S. at 490. Because judges in Maryland have the discretion to impose a sentence of life with the possibility of parole, the state contends that Defendant's case does not raise the same concerns articulated by the Supreme Court. Additionally, the state notes that in Maryland a judge has the ability to suspend all or part of a defendant's sentence. See *Cathcart v. State*, 397 Md. 320, 327 (2007).

Furthermore, the state reasons that Maryland law already provides that, in every sentencing hearing, a court is required to "tailor the criminal sentence to fit the 'facts and circumstances of the crime committed and the background of the defendant, including his or her reputation, prior offenses, health, habits, mental and moral propensities, and social background.'" *Jones v. State*, 414 Md. 686, 693-97 (2010); MD. RULE 4-342(f). To that end, the state posits that Defendant already had the opportunity to "face the sentencing body . . . and to explain in his own words the circumstances of the crime as well as his feelings regarding his conduct, culpability, and sentencing." *Shifflett v. State*, 315 Md. 382, 386 (1989) (citations omitted). Thus, the state asserts that Defendant's case is materially different from the mandatory, life-without-parole sentencing regimes discussed in *Miller* and *Montgomery*.

b. *The Sentencing Court Complied with Miller/Montgomery*

The state notes the Supreme Court found in *Montgomery* that *Miller* does not require a specific finding regarding a child's incorrigibility or irrevocable corruption. In reaching this conclusion, the court was "careful to limit the scope of any attendant procedural requirement to avoid intruding more than necessary" upon State sovereignty. *Montgomery, supra*, at 735. Thus, the state proffers that the only step a court needs to take to comply with *Miller*'s procedural component is to "consider a juvenile offender's youth and attendant characteristics" before determining that life without parole is a proportionate sentence. *Id.*

In this case, the state avers that the sentencing court properly considered all relevant factors when it sentenced Defendant to life without parole.¹ It asserts that there is no doubt that Defendant represents that “rare juvenile offender whose crime reflects irreparable corruption.” *Montgomery, supra*, at 734. The court found that Defendant “knowingly, willfully, and voluntarily” committed six “cowardly murders of innocent, defenseless human beings.” T. 11/8/06 at 17. It considered mitigating evidence such as the possible influence of Muhammad over Defendant and took into account his age, but nevertheless found that the life-without-parole sentences were just and proportionate.

c. *Alternative State Grounds*

In opposing Defendant’s argument that Article 25 should be read more expansively than the Eighth Amendment, the state asserts that it is to be read *in pari materia* with the Eighth Amendment because they both “were taken virtually verbatim from the English Bill of Rights of 1689.” *Walker v. State*, 53 Md. App. 171, 183 (1982). The state notes that Defendant offers no rationale for departing from this precedent nor provides legal support for his assertions. Accordingly, the state maintains that Defendant’s sentence violates neither the Eighth Amendment nor Article 25.

Victim Representative’s Response

The principal argument advanced by the victim representative Nelson Rivera, husband of the fifth person murdered, Lori Ann Lewis-Rivera, is that the life-without-parole sentence is not illegal. That being the case, the use of a Rule 4-345 motion – which can be filed at any time – to attack a facially valid sentence is improper.

Furthermore, it is contended that expanding the definition of “illegal sentence” would render nugatory the remedies provided to a criminal defendant in the Uniform Post Conviction Procedure Act, codified at MD. CODE ANN., CRIM. PROC. §7-101, *et seq.*, and would encourage incarcerated litigants to challenge their sentences *ad infinitum*, with the ability to file a direct appeal from any adverse judgment. Such a procedure, it is argued, re-victimizes family members

¹ The state notes that the court received evidence including: the facts of the case, a Presentence Investigation Report, Victim-Impact Statements, the defendant’s allocution, and the arguments of counsel.

and violates the statutory policy in MD. CODE ANN., CRIM. PROC. §11-1002 (b)(13) that victims are entitled to a speedy disposition of criminal cases, to minimize anxiety and stress.

It is emphasized that Defendant had a number of post-sentencing options available to him, only some of which he has utilized. He has a pending federal *habeas corpus* case in the United States District Court for the District of Maryland, which has been stayed pending exhaustion of his state remedies. He could have, but did not, file a request for sentence review by a three-judge panel, under MD. RULE 4-344. He filed a motion for reconsideration of sentence under MD. RULE 4-345, which was ultimately denied by the court because no request for hearing or disposition was made, and more than five years had elapsed since the filing. He did not seek leave to appeal his plea to the Court of Special Appeals.

Law & Analysis

a. Legality of the Sentence

Before undertaking analysis of the constitutional issues raised by Defendant, the court must decide whether the sentence imposed in this case is illegal, so as to give rise to a motion under Rule 4-345. That rule permits the court to correct an illegal sentence at any time. Historically, motions to correct illegal sentences have been granted only where the illegality inheres in the sentence itself, or the sentence should never have been imposed. *Baker v. State*, 389 Md. 127, 133 (2005).

Thus, the sentence in *Jones v. State*, 384 Md. 669 (2005) was illegal because no verdict was announced in court by the jury, so that it could be hearkened and polled. *State v. Griffiths*, 338 Md. 485 (1995) held that sentences imposed for an offense and its lesser-included crime were prohibited by double jeopardy principles, and thus illegal and subject to a Rule 4-345 motion. *Walczak v. State*, 302 Md. 422 (1985) involved the award of restitution to a victim of a crime for which defendant was not convicted, and thus was illegal. In *Roberts v. Warden of Maryland Penitentiary*, 206 Md. 246 (1955), the court stated, albeit in *dicta*, that a sentence exceeding that permitted by law is illegal.

It is true that in *Evans v. State*, 382 Md. 248 (2004) and *Oken v. State*, 378 Md. 179 (2003), the Court of Appeals reviewed death sentences under Rule 4-345 where, subsequent to the imposition of sentence, a United States Supreme Court decision “might support an argument

that an alleged error of constitutional dimension may have contributed *to the imposition of the death sentence.*” *Baker, supra*, at 134 (emphasis supplied). In this case, of course, Defendant did not receive the death penalty.

Nor is a life-without-parole sentence the functional equivalent of a death sentence. In rejecting a similar claim advanced by the appellant in *Woods v. State*, 315 Md. 591 (1989), the Court of Appeals has stated its disagreement “with the notion that a life sentence without the possibility of parole is, even relatively, the equivalent of death itself.” *Id.* at 606-07.

There was nothing inherently illegal about Defendant’s sentence. There was no jury trial, and thus no problem as arose in *Jones*. There were no merger issues as presented in *Griffiths*, nor issues of restitution like that in *Walczak*. There was also nothing illegal about the length of the sentence as in *Roberts*.

This court is cognizant of the rule laid down in *Montgomery v. Louisiana* that a state court collaterally reviewing a sentence must give retroactive effect to the pronouncement of a new substantive rule of constitutional law. That new substantive rule, however, is that *mandatory* life-without-parole sentences for juveniles are disproportionate sentences which violate the Eighth Amendment. This is so because they deprive the sentencing judge of the ability to consider *any* mitigating circumstances that might otherwise ameliorate the harshest sentence, a case which most assuredly is not present here.

Accordingly, this court rules that Defendant is not entitled to seek review of his sentence under Rule 4-345. It does not opine whether he has another state law remedy. Because it is a virtual certainty that this case will be appealed, the court will address other relevant issues raised by the parties.

b. A Judge is Presumed to Know the Law

Trial judges in Maryland are presumed to know the law and apply it correctly. Failure to recite a particular incantation or mere imprecision of words does not necessarily render a judge’s decision erroneous. The judge is not required “to spell out in words every thought and step of logic” taken to reach a particular conclusion. *Dickens v. State*, 175 Md. App. 231, 241 (2007). Numerous appellate decisions of this state reaffirm that maxim.

In *State v. Chaney*, 375 Md. 168 (2003), the failure of a trial judge to acknowledge the existence of a statute permitting suspension of a life sentence for murder was insufficient to infer that he was unaware of his ability to suspend that sentence.

In *Gilliam v. State*, 331 Md. 651, 673 (1993), the trial judge's failure to state the correct standard of proof required to show the voluntariness of a confession was held to not constitute error. See also *Ball v. State*, 347 Md. 156 (1997) (judge presumed to know proper use of victim impact evidence); *Whittlesey v. State*, 340 Md. 30 (1995) (no error by trial judge in failure to state his reasons for overruling a *Batson* challenge); *Dickens v. State, supra* (no error by judge in failing to discuss authentication of text messages that were admitted at trial).

In the case at bar, Judge Ryan was an experienced jurist who served on the Circuit Court bench for 15 years, and would have been well-aware of the options presented to him at sentencing. They ranged from a suspended sentence to life-without-parole. Furthermore, it is presumed that he was aware of the Supreme Court pronouncements on the issue of punishment for juvenile offenders. In *Roper v. Simmons*, 543 U.S. 551 (2005), which was established law when Malvo's sentence was imposed, the Supreme Court held that capital punishment of individuals under the age of 18 is cruel and unusual punishment and therefore violative of the Eighth Amendment, overruling *Stanford v. Kentucky*, 492 U.S. 361 (1989). The *Roper* court pointed out that juvenile offenders, because of immaturity, are likely to engage in "impetuous and ill-considered actions and decisions;" are more susceptible to negative influences and peer pressure; and that their character is not well-formed, resulting in "transitory" personality traits. As a result, "[t]he reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character." *Id.* at 569-70.²

While *Roper* was not a life-without-parole case, it is not insignificant that the term "irretrievably depraved character" presages *Miller's* requirement that the court find "irreparable corruption" before imposing such sentence. Judge Ryan would have been well-aware that a juvenile (albeit one four months from majority) ought to be beyond rehabilitation before life-without-parole could be imposed.

² The court respectfully suggests that Justice Sotomayor's suggestion in her *Adams v. Alabama* concurrence (upon which Malvo relies) that pre-*Miller* courts did not have the benefit of the Supreme Court's guidance regarding the diminished culpability of juveniles is belied by this statement, penned by Justice Kennedy more than a year before sentencing took place in the case at bar. It should also be noted that there were other concurring opinions filed in *Adams*, including that of Justice Thomas, joined by Justice Alito, who wrote that by granting the decision to vacate, the court was not addressing "whether petitioner's sentence actually qualifies as a mandatory life without parole sentence." 136 S. Ct. at 1797.

Judge Ryan is also presumed to have knowledge of the Maryland statutory law regarding life-without-parole, and the case law which did not require him to utter any particular phraseology before pronouncing sentence.

c. Were the Life-Without-Parole Sentences in this Case Cruel and Unusual In Light of the Decision in Miller?

Beginning in 2005 the Supreme Court, in a trilogy of cases, held that the Eighth and Fourteenth Amendments forbid imposition of disproportionate sentences on juveniles, which the court seems to define as persons under 18 years of age. First, in *Roper*, discussed above, the court found that the death penalty for a juvenile offender is unconstitutional. In *Graham v. Florida*, 560 U.S. 48 (2010), the court held that the Eighth Amendment prohibits imposition of life without parole for juvenile offenders who committed non-homicide criminal offenses.

Finally, in *Miller v. Alabama, supra*, the Court considered the cases of two 14-year-old offenders who were convicted of murder and sentenced to life imprisonment without the possibility of parole. In neither case did the sentencing authority have any discretion to impose a different punishment. Ultimately, the Court held that “mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment’s prohibition on cruel and unusual punishments.” 567 U.S. at 465. In *Montgomery v. Louisiana, supra*, the court concluded that its holding in *Miller* “announced a substantive rule of constitutional law,” giving *Miller* retroactive effect. 136 S. Ct. at 736.

While it is understandable that those heartened by the decision believe that *Miller* may someday be extended to *discretionary* life-without-parole sentence, that issue was simply not presented therein for decision, and *Miller*’s explicit holding applies only to *mandatory* life-without-parole sentencing schemes. 567 U.S. at 4650. The suggestion that the ruling applies to discretionary sentences is *dicta*.

In a concurring and dissenting opinion in *Baby v. State*, 404 Md. 220, 276-77, Judge Irma Raker wrote: “Most lawyers recall learning in law school that the term ‘holding’ refers ‘to a rule or principle that decides the case,’ the *ratio decidendi* of the case, whereas *dicta* ‘typically refers to statements in a judicial opinion that are not necessary to support the decision reached by the court [citation omitted].” The *ratio decidendi* of *Miller* and *Montgomery* was that a *mandatory* life-without-parole requirement for juveniles robbed a trial judge of his or her ability to exercise discretion.

Clearly, Maryland employs a discretionary sentencing scheme. To the extent that Defendant characterizes his life-without-parole sentence as mandatory, his arguments are unconvincing. That the Governor of Maryland has the ability to deny him parole without consideration of the *Miller* factors does not make the judicially-imposed sentence any less discretionary. See *Lomax v. Warden, Maryland Correctional Training Ctr.*, 356 Md. 569, 577 (1999). As required by *Miller*, judges in this state are still able to consider youth and attendant circumstances and can sentence juvenile offenders being tried as adults to sentences that are more lenient than life-without-parole.

There is currently no reported Maryland appellate decision that has passed upon the applicability of *Miller* to Maryland's discretionary life-without-parole for juveniles sentencing scheme. In *State v. Lawson*, 2016 WL 3612773, in the Circuit Court for Baltimore County, a Motion to Correct Illegal Sentence was decided by Judge Robert E. Cahill, Jr., 15 years after the juvenile defendant was convicted of first degree murder. Judge Cahill upheld the life-without-parole sentence imposed by then-Circuit Court Judge Alexander Wright. In denying the defendant's motion, the court found that Judge Wright considered the *Miller* factors in imposing sentence, without discussion of the mandatory v. discretionary aspect of the sentence. That case was appealed to the Court of Special Appeals, where it was submitted on brief in April, 2017. It has not been decided as of the date of this Memorandum Opinion and Order.

Federal and state courts from around the country have considered *Miller* and its applicability to discretionary life-without-parole sentences. Counsel have cited several of them in their memoranda, but not all. Cases finding *Miller* inapplicable to juvenile discretionary life-without-parole sentences include *United States v. Jefferson*, 816 F.3d 1016, 1019 (8th Cir. 2016) (observing that federal circuit courts have "uniformly declined to apply *Miller*'s categorical ban to discretionary life sentences"); *Davis v. McCollum*, 798 F.3d 1317 (10th Cir. 2015); *Croft v. Williams*, 773 F.3d 170 (7th Cir. 2014) (ample justification for life-without-parole sentence where defendant's crimes were described by the judge as among the most brutal he had ever seen); *Evans-Garcia v. United States*, 744 F.3d 235 (1st Cir. 2014); *Bell v. Uribe*, 748 F.3d 857 (9th Cir. 2013), *cert. denied*, 135 S.Ct. 1545 (2015); *State v. Houston*, 353 P.3d 55 (Utah 2015); and *Conley v. State*, 972 N.E. 2d 864 (Ind. 2012).

Representative cases holding that *Miller* applies even to discretionary life-without-parole sentences include *McKinley v. Butler*, 809 F.3d 908 (7th Cir. 2016) (*but see Croft v. Williams, supra*); *State v. Valencia*, 2016 WL 1203414 (Ariz.); *Veal v. State*, 784 S.E. 2d 403 (Ga. 2016);

State v. Seats, 865 N.W. 2d 545 (Iowa 2015); and *Commonwealth v. Batts*, 2017 WL 2735411 (Pa.).

The court finds *State v. Houston*, *supra*, instructive. There, a 17 year-old was convicted of aggravated murder and the jury voted a sentence of life-without-parole. His sentence was challenged on several grounds. In upholding the discretionary sentencing scheme in Utah for juvenile life-without-parole offenders, the Supreme Court of Utah remarked:

“[T]hough the penological justifications for [life-without-parole] may be diminished for a juvenile compared to an adult, such a sentence is not without justification in our criminal sentencing scheme....[O]ur statutory scheme enables the kind of individualized sentencing determination that the Supreme Court has deemed necessary for serious offenses. Utah [law] permits the sentencer to consider any and all relevant factors which would affect the sentencing determination....[A] great majority of states as well as the federal system permit [life-without parole] sentences for juveniles while only six jurisdictions affirmatively prohibit them. In looking to these as an indication of society’s standards, we cannot conclude that the ‘national consensus’ favors the prohibition of [life-without-parole] for juveniles convicted of homicide.” *Id.* at 75-76.

[W]here, as here, we find no constitutional violation, we may not “substitute our judgment for that of the legislature regarding the wisdom of a particular punishment [citation omitted].” *Id.* at 77.

State v. Houston is in accord with the law of this state, as represented by the following language from *Phipps v. State*, 39 Md. App. 206, 212 (1978):

The validity of legislatively determined punishment is presumed [citation omitted] and courts “may not require” that “a democratically elected legislature” enact the least severe possible penalty as the sanction for a crime. As long as the punishment that is decreed conforms “with the basic concept of human dignity [citation omitted] and is neither ”cruelly inhumane [n]or disproportionate [citation omitted] to the offense, there is no violation of the Eighth Amendment [citation omitted], nor of the Maryland Declaration of Rights, Articles 16 and 25.

In reaching its decision in *Miller*, the Supreme Court heavily relied upon its decisions in *Roper* and *Graham*. Summarizing those two cases, the court found five factors that a mandatory sentencing scheme prevents a court from considering. Those factors are:

1. A defendant’s “chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences.”

2. A defendant's "family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional."
3. "[T]he circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him."
4. Whether the defendant "might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys."
5. "[T]he possibility of rehabilitation . . ."

567 U.S. at 477.

Miller mandates an inquiry into whether the sentencing court availed itself of the opportunity to consider those factors and determine "how those differences counsel against irrevocably sentencing [the particular juvenile offender] to a lifetime in prison." *Id.* at 480. The holding does not "categorically bar a penalty for a class of offenders or a type of crime." *Id.* at 483. "Instead, it mandates only that a sentence follow a certain process—considering an offender's youth and attending characteristics—before imposing a particular penalty." *Id.*

"*Miller*'s substantive holding [is] that life without parole is an excessive sentence for children whose crimes reflect transient immaturity." *Montgomery*, 136 S. Ct. at 735. A court must consider the "penological justifications for life without parole . . . in light of the distinctive attributes of youth." *Id.* at 734. In other words, when evaluating the considerations outlined in *Miller*, a court cannot sentence a juvenile homicide offender to a life-without-parole sentence unless then defendant is "the rare juvenile offender whose crime reflects irreparable corruption." *Id.* (citing *Miller*, 567 U.S. at 479-80).

Miller does not mandate that a judge make a specific factual finding that adopts the verbiage of *Miller* or *Montgomery*. Rather, the judge needs to only consider "the [child's] diminished culpability and heightened capacity for change." *Montgomery*, 136 S. Ct. at 733. An examination of the record considered by Judge Ryan is appropriate to determine if the requirements of *Miller* and *Montgomery* were met.

The first factor Judge Ryan considered was Defendant's "chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences." *Miller*, 567 U.S. at 477. At the time of the last murder in this case, Defendant was 17 years old, roughly four months shy of turning 18. The sister of one of the victims spoke

at the sentencing hearing, telling Defendant “I say to you, Mr. Malvo, you were old enough to know right from wrong.” T. 11/8/06, at 5-6. Judge Ryan stated that he was aware of the apparent influence that John Allen Muhammad had over Defendant as a youth. *Id.* at 17. Defendant’s actions were not the result of a 14 year-old’s lesser-crime-gone-wrong as was seen in *Miller*. Instead, the facts of the case showed ample evidence of planning and premeditation, and the court expressly found that Defendant “knowingly, willingly, and voluntarily participated in the cowardly murders of innocent, defenseless human beings.” *Id.* Thus, the court expressly considered Defendant’s youth in sentencing him, finding that it did not absolve him from the utmost culpability for his crimes.

The second factor considered was defendant’s “family and home environment that surround[ed] him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional.” *Miller*, 567 U.S. at 477. The court received a Presentence Investigation Report and acknowledged that “as a child, [Defendant] had no one to establish values or foundations” for him. T. 11/8/06, at 17. Attached to that Presentence Investigation Report was a letter from Defendant’s attorneys, a Virginia Presentence Investigation Report, and reports of two medical doctors and a licensed social worker totaling nearly 30 pages. In their letter to the court, Malvo’s attorneys described the medical reports as “incredibly germane to Lee’s development, culpability, and future.” As stated above, Judge Ryan was completely aware of the influence that Muhammad had over Defendant and that his “chances for a successful life became worse than they already were.” T. 11/8/06, at 17. Despite these considerations, Judge Ryan determined that life without parole on each count was the appropriate sentence for Defendant.

Third, Judge Ryan had to consider “the circumstances of the homicide offense, including the extent of [Defendant’s] participation in the conduct and the way familial and peer pressures may have affected him.” *Miller*, 567 U.S. at 477. There is no doubt that the court appreciated the circumstances surrounding commission of Defendant’s crimes. From the state’s proffer at the time of Defendant’s plea hearing, and Defendant’s testimony at the Muhammad trial, the judge knew that Defendant and Muhammad had devised an elaborate plan to terrorize the citizens of Montgomery County and surrounding jurisdictions. Judge Ryan described Defendant’s actions as “cowardly murders of innocent, defenseless human beings.” T. 11/8/06, at 17. The court understood that Defendant had willfully participated in what many have characterized as the most heinous acts ever committed in the county.

The fourth factor is “[w]hether the defendant “might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys.” *Miller*, 567 U.S. at 477-78. The court acknowledged that Defendant took steps to aid authorities by offering to provide information and cooperation in Muhammad’s trial and that his testimony “made these prosecutions worthwhile.” T. 11/8/06, at 16. Judge Ryan went so far as to commend the Defendant for his “acceptance of guilt and voluntary assistance without any promise of leniency.” *Id.* at 17. Further, there is no indication on the record or in Defendant’s motion that he was unable to assist his own attorneys. The court simply felt that Defendant’s assistance was not enough to mitigate his sentence.

Finally, the court was charged with inquiry into “the possibility of rehabilitation.” *Miller*, 567 U.S. at 478. Judge Ryan acknowledged that Defendant “could have been somebody different,” and that he had “shown remorse and . . . asked for forgiveness.” T. 11/8/06, at 17. Nonetheless, he also concluded that “Forgiveness is between you and your God, and personally, between you and your victims, and the families of your victims. *This community, represented by its people and the laws, does not forgive you.*” *Id.* (emphasis supplied).

Unlike the situation presented in *Miller*, Defendant, his lawyers and experts had every reason and opportunity to present mitigating information to the court. While he did not employ the precise phrasing of the Supreme Court in *Miller* and *Montgomery*, Judge Ryan clearly concluded that Defendant was among the most uncommon of juvenile offenders, deserving of a lifetime of imprisonment without the possibility of parole. He expressly told Defendant that he wanted the sheriffs “to remove you from this County and State, and return you to where you came from.” T. 11/8/06, at 17. Obviously, even taking into consideration Defendant’s acceptance of responsibility, the court determined that it would be inappropriate for him ever to return to this community.

A juvenile convicted of murder in Maryland has numerous procedural remedies available to him after trial or plea. Defendant Malvo was afforded procedural and substantive due process throughout his proceedings in Maryland, and Judge Ryan had the discretion to impose what he considered to be the appropriate sentence, including authority to suspend all or part of the time imposed. Defendant Malvo had the right to appeal to the Maryland Court of Special Appeals if he had been convicted after trial and, if permitted, to the Court of Appeals. Even after the guilty

plea, he could have sought leave to appeal on limited issues, including competency of counsel, voluntariness, and the legality of the sentence imposed.

As previously discussed, Malvo could have asked three judges of the court to review the sentence which, in this case, could not have been increased. The trial judge also had the power to reduce or modify the sentence, for a period of five years, but that remedy was never pursued. Malvo may also seek relief under the Post-Conviction Procedure Act. He also has the ability to ask for a pardon or remission of sentence from the Governor. MD. CODE ANN., CORR. SERVS §7-601(a).

As a final matter, Defendant asserts that Article 25 provides him more expansive rights than those granted under the Eighth Amendment. He cites no authority for his contention and only baldly implies that there is a categorical ban on juvenile life-without-parole sentences. This is simply not the state of the law in Maryland, and Defendant offers no reasons to depart from judicial precedent that Article 25 should be interpreted *in pari materia* with the Eighth Amendment. *See Walker v. State*, 53 Md. App. 171, 183 (1982).

Conclusion

This court finds that Defendant is not entitled to seek review of his sentence under MD. R. 4-345, as the sentence imposed was substantively and procedurally legal under the law of this state. Whether a remedy exists under the Post-Conviction Procedure Act or by some other mode is not before the court.

The six consecutive life-without-parole sentences were imposed after a full consideration of Defendant's physical, mental, and emotional state. Two presentence investigations, reports of medical doctors and a licensed social worker, together with Victim Impact Statements were presented to the court for its consideration. Both sides allocuted for what they thought was an appropriate sentence, and defense counsel never requested imposition of any sentence other than life.

Judge Ryan is presumed to have known the law, including the juvenile/adult sentencing dichotomy described in *Roper v. Simmons* that "[juveniles struggling to find their identity make it] less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character", as well as Maryland statutory considerations, at the time he imposed the sentence. *Miller* and *Montgomery* applied only to mandatory life-without-parole

sentences, and statements suggesting an expansion of that rule to discretionary sentences are *dicta*.

Even if *Miller* and *Montgomery* apply to discretionary life-without-parole sentences, however, no specific *mantra* is required of the judge in rendering his sentence. In this case, Judge Ryan affirmatively considered all the relevant factors at play and the plain import of his words at the time of sentencing was that Defendant is “irreparably corrupted.”

For these reasons, it is this 15th day of August, 2017, by the Circuit Court for Montgomery County, Maryland,

ORDERED, that Defendant’s Motion to Correct Illegal Sentence is **DENIED**.



ROBERT A. GREENBERG, Judge
Circuit Court for Montgomery County, Maryland