

Malvo

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Malvo was "very lucky that he looks a lot younger than he is." And he suggested the timing of the deliberations just days before Christmas affected the jury.

"We used to have a theory when I was a very young prosecutor that whatever you do, don't try one on Christmas week," Horan said.

Last month, Muhammad, 42, was convicted of murder in nearby Virginia Beach, and the jury recommended he get the death penalty. The judge in that case could still overrule the jury when he formally sentences Muhammad.

Both men could still be tried in other shootings in Virginia and elsewhere around the country and could get the death penalty.

Malvo was convicted of murder last week in the shooting of FBI analyst Linda Franklin. She was cut down by a single bullet to the head in one of 10 slayings that gripped the Washington area with fear for three weeks in October 2002. Malvo was 17 at the time.

Defense attorney Craig Cooley had argued that Malvo had been molded into a killer by the charismatic Muhammad.

Cooley said Malvo came to regard the Muhammad as a father figure and was susceptible to older man's influence because of his own father's absences and because his mother beat him and moved him constantly.

"Children are not born evil. When they commit evil acts, you can almost always trace the acts to the evil that has been performed against them," Cooley said.

In seeking to save Malvo's life, Cooley held a big rock, telling the jury that in ancient times the jury itself would stone the defendant.

"The stone has no compassion. Once it has been cast, it has no ability to temper its impact. The commonwealth urges you to vote to kill, to stain your stone with the blood of this child," Cooley said.

Prosecutors had argued that death was the only appropriate sentence for Malvo.

Horan said that the killings were part of a scheme to extort \$10 million from the government and that Malvo was the triggerman in most if not all of the slayings. Horan rejected the notion that Malvo was less responsible for his crimes because he had come under the influence of



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Muhammad.

"They were an unholy team, as vicious as brutal and as uncaring as you can be," Horan said. "You can talk about John Muhammad all you want. Maybe it was his plan. Maybe it was his idea. But the evidence stamps this defendant as the shooter. ... He did it. Not John Muhammad."

The jury consisted of eight women and four men, eight whites and four Blacks. The foreman was a 41-year-old minister, and four others had occupations connected to education. Two were homemakers.

At the trial, the defense had presented an insanity

defense, claiming Muhammad had so brainwashed Malvo with his notions of Black nationalism, racism and revolutionary violence that the teenager was unable to tell right from wrong. Malvo and Muhammad are Black.

Though the argument failed in the guilt-or-innocence part of the trial, it was central to the penalty phase.

Also during the penalty phase, jurors wept when they heard testimony from Franklin's 24-year-old daughter Katrina Hannum, who said she has nightmares every night in which she sees Malvo shoot her mother in the head.

Malvo was convicted of two counts of capital murder: one alleging Franklin's slaying was part of a series of murders, the other alleging the killing was intended to terrorize the population. The second law was passed after Sept. 11. Both counts could have brought the death penalty.

Virginia law requires a jury to find at least one "aggravating factor" to impose a death sentence. Prosecutors argued there were two: that Malvo poses a future danger and that his crimes were "outrageously or wantonly vile."

Prosecutors pointed to an escape attempt Malvo made the day of his arrest and letters Malvo wrote in jail as evidence of his dangerousness. One has a drawing of a police officer in crosshairs with the notation: "Make no mistake. I would take you out at your dinner table." Another note said: "Sept. 11 we will ensure will look like a picnic to you."

During the trial, the jury heard recordings of Malvo bragging to police about killing 10 people at random, boasting haughtily that most of the victims had been brought down by a single shot, and chuckling as he re-

called how a lawnmower kept rumbling along after the man pushing it was shot.

"If that's not vile," Horan said of the random killings, "there is no vile."

Malvo later told mental-health experts that he had been the triggerman in only one of the killings, that of a bus driver; the defense said he took the blame for all the shootings to protect Muhammad.

But the jury rejected that theory; in convicting Malvo, it concluded he was the triggerman in Franklin's slaying.

Prosecutors in Maryland and Louisiana have said they want a crack at Muhammad, and Malvo could face a similar fate.

Attorney General John Ashcroft had cited Virginia's ability to impose "the ultimate sanction" in sending Malvo and Muhammad to Virginia for prosecution.

Virginia is one of only 21 states that allow the execution of those who were 16 or 17 when they killed. Since the death penalty was reinstated in 1976, Virginia is one of only six states that have actually executed someone whose crime was committed as a juvenile.

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