

Teenagers and the ultimate punishment

John Lee Malvo is accused of terrible crimes, but executing juvenile offenders is wrong

For nearly a month, many of us across the country woke up in the morning wondering whether an unknown sniper had found another victim while we slept. As President of the American Bar Association, which has a Washington, DC office, I feared for the safety of my colleagues and others who live in the area. As the number of innocent victims mounted, so did our fears. Thus, when I learned that there had been a break in the case, I felt an initial wave of relief. However, within hours of an arrest and before charges had been filed, I was gripped by a new concern stemming from an evolving jurisdictional competition to be the first to kill 17-year-old John Lee Malvo.

Just a few weeks ago, four members of the United States Supreme Court publicly expressed grave concerns regarding the execution of juvenile offenders. The American Bar Association has long shared these concerns. Persons under the age of 18 cannot vote, drink alcohol, serve on juries, make medical decisions, or enter into contracts. Clearly, our society, through our legal system, has limited these activities because we know that there are fundamental differences between teenagers and adults. These important distinctions in brain development, impulse control, maturity, and cognitive ability have been documented scientifically by such organizations as the American Psychiatric Association, the National Mental Health Association, the American Society for Adolescent Psychiatry and the American Academy for Child and Adolescent Psychiatry.

Beyond raising Eighth Amendment concerns that we should punish according to culpability and reserve the most severe punishment for the worst offenders, the execution

of juvenile offenders raises other concerns about due process and procedural fairness. The underdeveloped capacity of juveniles renders these youthful offenders less able to assist in their own defense at trial. Furthermore, reminiscent of the Supreme Court's reasoning in its June, 2002 decision to prohibit the execution of those with mental retardation, the facts are that juveniles are more prone to giving false confessions, are less able to offer mitigating evidence, and typically make poor witnesses. Hence, we know that, after seven hours of interrogation, information elicited from a scared, exhausted 17-year-old may not likely be the most accurate or reliable.

The United States government, 16 of the 38 states that permit executions in this country and virtually every other nation in the world understand the developmental and legal problems surrounding the execution of juvenile offenders and prohibit their execution. All of this is not to say that teenagers do not understand the difference between right and wrong, or that they should not be punished for violating society's laws. It does mean that we should not demand they pay the ultimate price for their mistakes – their lives.

I can only imagine the suffering of the families and friends of the victims. A desire to punish harshly is understandable after weeks of terror and senseless death. However, we must remember that fundamental American values and our justice system require due process, a fair trial, and punishment appropriate to the level of culpability. Let us remind ourselves that, as a civilized society, we cannot let our fear and anger compromise the constitutional protections that are a safeguard for us all.

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