June 28, 2017

The Honorable Terence R. McAuliffe  
Governor of the Commonwealth of Virginia  
1111 East Broad Street  
Richmond, Virginia 23219

Dear Governor McAuliffe:

I write on behalf of the American Bar Association to express our concerns regarding the case of Virginia death-row inmate William Morva, who is scheduled to be executed on July 6 and whose petition for executive clemency is now before your Office. While his guilt in the tragic murders of Derrick McFarland and Corporal Eric Sutphin is not in dispute, there is also significant evidence that Mr. Morva has a long and significant history of severe mental illness. It is for that reason that the ABA has concerns about whether the death penalty is appropriate in his case.

While the ABA does not oppose or support capital punishment on the merits, we do have an interest in promoting a fair and accurate justice system and ensuring that the death penalty is not imposed on individuals who do not have the highest culpability for the most serious crimes. For this reason, we opposed the execution of juveniles and people with intellectual disabilities for a number of years before the U.S. Supreme Court ruled that the death penalty was unconstitutional as applied to those groups. Based on the same principles, the ABA also opposes the execution of individuals with severe mental illness present either at the time of their crime or at the time of their execution. (See ABA Mental Illness Resolution, 122-A, 2006.)

Crafted by a diverse group of mental health professionals and legal experts, our position is that individuals should not be sentenced to death or executed if they had a “severe mental disorder or disability that significantly impaired their capacity (a) to appreciate the nature, consequences or wrongfulness of their conduct, (b) to exercise rational judgment in relation to conduct, or (c) to conform their conduct to the requirements of the law.” This does not mean that a defendant with severe mental illness should be absolved of responsibility for committing the crime; if found guilty, he or she should still be punished and could receive life in prison without parole.

Our society recognizes that juveniles and those with intellectual disabilities are less morally culpable than the “worst of the worst,” less able to appreciate the consequences of their actions, less able to participate fully in their own defense, and more likely to be wrongfully convicted. We are also increasingly aware that these characteristics apply to certain individuals with severe mental illness, especially when left untreated. In fact, more than 68% of Virginians, when polled in 2015, supported the exemption of people with documented severe mental illnesses from the death penalty and instead, if found guilty, the imposition of life without parole.

In Mr. Morva’s case, a thorough post-conviction investigation that included his complete psychiatric history led a clinical expert to find that he suffers from delusional disorder (DSM-5 § 297.1), a form of psychosis which causes him to be unable to distinguish reality from delusions.
She further found, based on all the interviews and medical records she had, that Mr. Morva was likely experiencing delusions at the time of his crimes that made him believe that people were trying to kill him. The defense cites evidence that in his late teens and early twenties, he began displaying bizarre behavior – including expressing beliefs that he had special powers, being found without all his clothes in a public restroom, and eating strange food like pine cones and raw meat. Additionally, there are reports that he continues to show symptoms to this day, as he refuses to accept visits from his family and lawyers, believing that they are part of a conspiracy to kill him.

We understand that the Virginia clemency power grants your Office broad authority in reviewing petitions for executive clemency, including the authority to request that the Virginia Parole Board investigate and report on a case. (See Va. Code Ann. § 53.1-231.) While executive clemency is an extra-judicial process, it remains a significant stage of legal review, especially when the government intends to take a life. It is exceedingly important that cases like this – involving a person with apparent severe mental disability – receive a particularly careful final review of a death sentence.

The evidence suggests that Mr. Morva’s severe mental disorder was present at the time of his crimes and still is present as he is approaching his execution date. We therefore urge you to give full consideration to the issue of his severe mental illness and how it may have impacted his understanding of reality and ability to control his actions before deciding whether to grant or deny his clemency petition. If you would like more information about the complex issue of severe mental illness and the death penalty as you consider this case, we have a variety of resources available at http://www.ambar.org/smiexemption that may be helpful.

Sincerely,

Linda Klein