



# COMMONWEALTH of VIRGINIA

Office of the Governor

George Allen  
Governor

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## STATEMENT OF GOVERNOR GEORGE ALLEN

*Re: Mario Benjamin Murphy*

"Mario Benjamin Murphy confessed to law enforcement authorities and then pleaded guilty to capital murder for the brutal murder of James Radoliff. Following his guilty plea and the sentencing hearing, Mr. Murphy was sentenced to death by Judge Jerome Friedman of the Circuit Court of the City of Virginia Beach.

"Mr. Murphy's skillful and dedicated attorneys, and the leaders of the government of Mexico, have raised several issues in their separate petitions for clemency. I have considered their petitions carefully and thoroughly, and have read many letters and other materials in this case, including transcripts and court opinions, and have come to the following conclusions:

### *Mr. Murphy Received a Fair Trial*

"At the time of his arrest, Murphy was read his *Miranda* rights, which included his right to remain silent and to speak to his attorney before saying anything to the police. He subsequently gave the police a lengthy and voluntary confession to the murder.

"At trial, Murphy was represented by an experienced and respected defense attorney, who was retained by Murphy. At the sentencing hearing, Judge Friedman, the trial judge, who is well-respected by those who practice in front of him and in his community, complimented Murphy's attorney for the quality of his representation.

**There Is No Evidence of Discrimination Based on National Origin or Ethnicity**

**"Some of Murphy's proponents have stated that there is a difference between fact and perception and that there is a 'perception' of discriminatory treatment of Murphy due to his nationality. I am concerned, however, with facts and reality.**

**"I find no evidence whatsoever that Murphy's case was handled differently by Virginia Beach authorities because he was a Mexican national at the time of his arrest and trial. Such discrimination would be intolerable in the Commonwealth of Virginia, were it the case, but I find nothing to support any such charge.**

**"On the contrary, there were logical reasons that I do not find arbitrary or unreasonable for the decisions by the Commonwealth's Attorney of Virginia Beach to attempt to reach plea agreements with certain defendants in the case and not with Murphy.**

**"The two individuals who set the murder in motion were Robin Radcliff, wife of James Radcliff, the murder victim, and Gerardo Hinojosa, her lover. Hinojosa, with Robin Radcliff's active assistance, hired Murphy to murder James Radcliff, offering Murphy \$5,000 to carry out the murder. After first attempting and failing to murder James Radcliff by himself, Murphy then recruited 17-year-old Aaron Turner to help in a second -- and successful -- attempt to murder Radcliff. Another man, James Hall, joined Murphy in the murder conspiracy and helped to carry out the second effort. Murphy told the 17-year-old Turner and Hall that for their assistance in the murder they would each get shares of the \$5,000.**

**"While Hinojosa was eligible for the death sentence, the Commonwealth's Attorney offered Hinojosa a plea bargain of life imprisonment in return for a guilty plea. Since Hinojosa is an obviously Hispanic surname -- and Hinojosa was even identified on the police offense report as 'Mexican American' -- if there were any effort in this case by the Virginia Beach authorities to target persons of Mexican ethnicity or national origin for the death penalty, then Gerardo Hinojosa would not have been offered a plea agreement of life imprisonment.**

**"The Commonwealth's Attorney did not seek the death penalty against Hinojosa because Hinojosa was not present in the Radcliff apartment the night that Murphy and the other two, Turner and Hall, stabbed and beat James Radcliff to death. However we may gauge retrospectively Hinojosa's moral culpability in the**

murder of James Radcliff -- and I do not minimize it in any fashion -- the facts available to the Commonwealth's Attorney at the time were that Virginia juries have historically been unlikely to impose death sentences on defendants who were not physically present at the crime scene. Thus, not seeking the death penalty against Hinojosa under those circumstances cannot be deemed retroactively to have been an arbitrary and unreasonable exercise of prosecutorial discretion.

"In the case of Robin Radcliff, once again, whatever her moral culpability may have been as an instigator of the conspiracy to murder her husband, the fact is that she was not in the room in which James Radcliff was murdered. The Commonwealth's Attorney knew the historical tendencies of Virginia juries not to impose death penalties on defendants who did not participate directly in the actual murder, and he made a decision to attempt to reach a plea agreement with her. As in the case of Hinojosa, that exercise of prosecutorial discretion cannot be deemed retroactively to have been arbitrary or unreasonable.

"Significantly, however, Robin Radcliff rejected the effort to reach a plea agreement and *from that point forward the Commonwealth's Attorney sought the death penalty against Robin Radcliff.*

"But the jury in her case, even after finding her guilty of capital murder, *could not agree to impose the death penalty.* Because the jury was unable to agree on the punishment during the sentencing phase, Robin Radcliff was sentenced to life imprisonment by operation of law. *The jury's refusal to impose the death penalty on Robin Radcliff clearly corroborated the reasoning behind the Commonwealth's Attorney's original decision to attempt to reach a plea agreement with her.*

"Of the other two defendants, Aaron Turner was recruited by Murphy -- *a fact that Murphy admits* -- and James Hall apparently stumbled into the conspiracy, and no one seriously contends that his role in the crime was equal to Murphy's.

"Thus, when one carefully and *objectively* analyzes the facts of the case looking for evidence of discrimination, one finds there is no evidence at all that Murphy was singled out for unfair or discriminatory treatment based on his citizenship or ethnicity.

**Murphy's Sentence of Death Was a Punishment that Fit the Crime**

**"Murphy's attorneys assert that his sentence of death is so disproportionate to the sentences received by the other defendants that I should commute it. However, as detailed above, his sentence cannot be regarded as grossly disproportionate or unjust when one weighs the facts of the case and Murphy's lead role in the heinous murder of James Radcliff.**

**"In almost any case involving multiple defendants, arguments will be made on appeal that the sentence received by one defendant was disproportionate to that received by his fellow criminals. The Supreme Court of Virginia has determined that it will not overturn a sentence on the basis of comparing sentences received by multiple defendants, and I as Governor will not substitute my judgment retroactively for the judgment of the trial judge as to the appropriateness of the sentence.**

**"Judge Friedman, the trial judge, was present throughout the trial, he personally weighed all the evidence in front of him and personally heard from and evaluated the witnesses -- including Murphy himself, who testified during the sentencing phase. Judge Friedman also knew of the relative roles of Murphy's codefendants in the murder of Mr. Radcliff and of the plea agreement with Hinojosa before he entered the final written order imposing the death sentence on Murphy.**

**"Yet after what he described on the record as 'two months of researching and soul searching' from the time Murphy pleaded guilty to the time of the sentencing hearing, Judge Friedman cited the following factors in sentencing Murphy to death:**

- \* That Murphy planned the killing of James Radcliff 'with premeditation, coldness, and lack of remorse at the time ... or immediately thereafter.'**
- \* That Murphy killed Mr. Radcliff while Radcliff was sleeping, [and] 'while he was defenseless.'**
- \* That Murphy planned the murder to such a degree of detail that 'it was made to look like a burglary; and, in fact, items of personal property were callously disposed of.'**
- \* That it was Murphy's second attempt to kill the victim.**

\* That Murphy was not under the influence of alcohol or drugs at the time of the murder.

\* That Murphy recruited another person to assist in the murder.

"Based on these facts, at the sentencing hearing the trial judge found both aggravating factors necessary under Virginia law to impose the death penalty: that the crime committed by Murphy was wantonly vile and inhuman, and that Murphy posed a continuing threat of future danger to other human beings.

"Though requested, Judge Friedman subsequently refused to reconsider Murphy's death sentence, noting on the record that 'the punishment in this matter fits the crime ...'

### *The Vienna Convention Issue Did Not Deny Murphy a Fair Trial*

"I am mindful of the deep interest of the government of Mexico in this case. I certainly respect their concerns about the Vienna Convention issue, as to whether Murphy was allowed to contact the Mexican consulate, but there are some pertinent facts to be considered in analyzing this issue.

"First, Murphy had lived in the United States since he was three years old, which was 16 years prior to the murder of James Radcliff. It can fairly be said that he was raised in the United States, and at the time of his arrest was as fluent in English as any U.S. citizen who had grown up in the United States. Given his surname, English fluency and long-time residence in Virginia Beach, there was absolutely no reason for the Virginia Beach authorities to suspect upon his arrest that Murphy was a citizen of Mexico.

"Second, neither Murphy nor his attorneys ever requested to talk to any officials from the Mexican government until several years after his conviction. When he requested such a contact, it was allowed. *There is absolutely no evidence that Murphy or his attorneys were ever prevented from contacting the Mexican authorities when he expressed a desire to do so.*

"Moreover, the central issue is whether this apparent violation of the treaty caused a violation of Murphy's fundamental right to due process of law and a fair trial. Both the U.S. District Court and the U.S. Fourth Circuit Court of Appeals considered this question and both concluded that it did not. They both found that Murphy was not prejudiced by any purported violation of the treaty. The U.S. Supreme Court chose not to disturb those rulings.

**"To overturn a valid sentence of a confessed murderer based on such a procedural issue — especially when the courts have said that no prejudice against Murphy resulted — would be an abdication of the oath that I took as Governor to the people of Virginia to uphold the laws and Constitution of the Commonwealth of Virginia.**

***"I respect the position of the Mexican government. But just as citizens of the United States must respect and obey the laws of any country they visit, we expect that visitors from other nations to Virginia will obey our laws, and suffer the same consequences that criminals in Virginia suffer when they break our laws. Regardless of a person's nationality, one must be responsible and accountable for one's actions.***

***"We cannot tolerate a double standard of justice: one standard for citizens of Virginia, and a lesser standard for someone who freely chooses to live permanently in Virginia, but who retains citizenship in another country and who belatedly invokes that citizenship in an effort to evade the justice imposed in a fair trial for a crime committed in Virginia against a Virginia citizen.***

**"I am cognizant of the offer of the Mexican government to take custody of Murphy, but the first question I must consider is whether to intervene to prevent the sentence of the Circuit Court of the City of Virginia Beach from being carried out.**

**"I am also mindful of the pleas from some considerate, credible and esteemed religious leaders requesting me to commute Murphy's sentence in order to protect against possible retaliation against U.S. citizens overseas, such as missionaries, and I understand the importance of Article 36 of the Vienna Convention in guaranteeing that U.S. citizens abroad receive fair treatment. As a frequent traveler abroad on trade missions myself — and as someone who has visited Mexico specifically twice as Governor and at other times before I became Governor — I am sensitive to those general concerns.**

**"However, I cannot equate the brutal, premeditated murder committed by Murphy with any act that U.S. citizens, such as missionaries, would commit while in a host country. And if any U.S. citizen committed such a heinous and unspeakable act of violence in another country, then he or she should fully expect to be held accountable and suffer the consequences.**

Summary

**"Mario Murphy committed a coldly premeditated, brutal murder. It was not an act of momentary passion or the result of the influence of alcohol or drugs. It was done for money.**

**"Murphy received a fair trial. He confessed and pleaded guilty. The trial judge carefully weighed all the mitigating factors and decided that the death penalty was appropriate in Murphy's case.**

**"The issues raised on clemency -- the appropriateness of the death sentence, the prosecutor's decisions as to the other defendants, and the Vienna Convention -- were issues that were available to be considered in the courts and were so considered.**

**"In the absence of compelling evidence that the sentence imposed on Murphy was the result of a miscarriage of justice that the courts were unable to rectify, I as Governor should not substitute my judgment retroactively for the judgments in this case rendered in the courts.**

**"Consequently, I have concluded that there is no basis for me to intervene, and I shall not prevent the sentence imposed by the Circuit Court of the City of Virginia Beach from being carried out as scheduled."**

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