

Sunday, December 2, 2007

**Working out at the same YMCA as the sniper convicts.**

Photo from website of U.S. District Court (W.D. Mi.). On the morning of the last Beltway sniper shooting, October 22, 2002, I left home early in upper Silver Spring to go to the Silver Spring YMCA -- which is just inside the Beltway -- on the way to my office in downtown Silver Spring. However, soon after I started driving, I hit extraordinarily heavy traffic. The radio said that another sniper shooting had just happened. I learned that police were trying to search cars driven by men near the scene of the shooting; unless the searches were by consent (I think most "consent" searches are not consensual), they violated the Fourth Amendment's prohibition against searches without probable cause. A radio news announcer talked of the risk of people caught in that morning's heavy traffic running out of gas, because many people became too frightened to stop for gas during the weeklong shootings, as some of the murders had taken place at gas stations. I had enough gas, but realized that I had had enough to drink at home that I wondered how long I could hold it in while waiting to get to a bathroom. My efforts to take detours around the traffic were of little help. I finally arrived at the YMCA; I think the traffic was still heavy, thus leading me still to workout there while waiting for traffic to clear. Later I learned that, in all likelihood, now-convicted snipers John Allen Mohammed and Lee Malvo were at the YMCA while I worked out there that morning, and probably numerous times before that. If I ever saw them there, I was never able to match their photos in the media with anyone I saw at the YMCA. Two days after the last sniper shooting, the sniper suspects were arrested, on October 24, 2002. The same day, I wrote on our website: "Two sniper suspects have been arrested in Montgomery County, MD. I underline, SUSPECTS. I've heard a lot of talk about 'catching 'em' ever since the first shooting, and little talk of preserving suspects' and criminal defendants' Constitutional rights. Now comes seeing how much justice will/won't be done from hereon in. Was it just for cops to stop white trucks left and right these past three weeks (the two suspects weren't even in a white vehicle), and then, two mornings ago, go as far as to try to search every car driven by a man near the scene of the last sniper killing? NO. "Will it be just to execute either of these arrested suspects if found guilty? NO; the death penalty is wrong. "Interestingly, the Gulf War, which I vehemently opposed and marched against as being premature at the least, trained Timothy McVeigh to kill, and suspect John Allen Muhammad to kill. Does violence beget violence, no matter how much the violent actor thinks s/he's on the side of angelic defense? How much does the U.S. military and the rest of the U.S. warmaking apparatus consider that when training and deploying soldiers? How much reasonable doubt will the arrested suspects' attorneys be able to show? If the suspects say nothing to the cops, and if they told nothing to anybody else, it's all circumstantial evidence, and will the prosecutors be able to rule out that nobody else did any of the killings, and that it wasn't somebody else who exclusively used the suspect's vehicle and the weaponry found inside to do any shootings? "As we all know, it's in times of danger like with these multiple sniper murders that too many people are willing to give up too much liberty. My own script when the police want a consent search is "No. No. I won't tell you why I'm refusing. I won't tell you why I'm refusing to tell you why I'm refusing. Am I free to leave?" "The sniper murders were horrendous. There's no question about that. The shooting victims are not honored if the Constitution is not honored during all these investigations and coming prosecutions." On November 5, 2007, Maryland's intermediate appellate court affirmed the Montgomery County, Maryland, Circuit Court conviction of John Allen Muhammed, who represented himself at trial. The 150-page court opinion, *John Allen Muhammed v. Maryland*, \_\_\_ Md. App. \_\_ (Nov. 5, 2007), includes chilling details of the sniper murders, including key descriptions of Lee Malvo's testimony of how the killings were planned. I assume that review will be sought in Maryland's highest court, which is the Court of Appeals. John Muhammed's appeal to the Maryland Court of Special Appeals complained as follows: "1. that Judge Ryan erroneously failed to comply with Maryland Rule 4-215, when he permitted the appellant to discharge counsel and to proceed pro se; "2. that Judge Ryan erroneously conducted a competency hearing and erroneously found the appellant to be competent to stand trial; "3. that Judge Ryan erroneously denied him a fair trial by refusing to permit him to call a number of witnesses in his defense; "4. that Judge Ryan erroneously permitted the State to present the prior recorded testimony of Dr. Emily Ward; "5. that Judge Ryan erroneously refused to remove the trial from Montgomery County; "6. that Judge Ryan erroneously refused to question the jury venire about a possibly disqualifying conversation reportedly overheard by one prospective juror; "7. that Judge Ryan erroneously allowed the State to cross-examine an officer about compliance with the discovery requirements and erroneously instructed the jury with respect to such compliance; "8. that Judge Ryan erroneously refused to allow the appellant to recross-examine a State's witness; and "9. that the cumulative effect of all of the above denied the appellant a fair trial." During the sniper shootings, I was very upset at the killings, but figured that statistically I was very safe, even though six of the shootings took place in the county where I live and work, and most of the others took place where I often travel for such activities as court appearances. However, now recognizing that Muhammed and Malvo were working out at my gym starting several weeks before the Beltway sniper shootings began, I may have been overoptimistic at the time. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00