

# **Mental Illness and the Death Penalty**

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## **Introduction**

There are significant gaps in the legal protection accorded severely mentally ill defendants charged with or convicted of a capital crime. Most notably, this country still permits the execution of the severely mentally ill. The problem is not a small one. A leading mental health group, Mental Health America, estimates that five to ten percent of all death row inmates suffer from a severe mental illness.<sup>1</sup>

This overview discusses the intersection of the law and the challenges faced by mentally ill capital defendants at every stage from trial through appeals and execution. It provides examples of some of the more famous cases of the execution of the mentally ill. Lastly, it describes current legislative efforts to exempt those who suffer from a serious mental illness from execution and the importance of such efforts.

## **I. Mental Illness and Capital Trials**

Since 1976, all capital trials in the United States are divided into two phases. At the first phase, the question is whether the defendant is guilty or innocent of the charged offense. If the defendant is found guilty at the first phase of a murder that is eligible for the death penalty in that jurisdiction, the defendant will then face the second phase. In the penalty phase of the trial, the jury will decide whether to recommend a life sentence or a death sentence for the defendant.

Mental illness is relevant to numerous important legal questions at capital trials, including:

(1) **POLICE INTERROGATION.** Those suffering from a mental illness can be more vulnerable to police pressure and more likely to give false confessions. Empirical studies demonstrate that the following characteristics associated with mental illness can lead to false confessions: impulsivity, deficits in cognitive processing, suggestibility, delusions and extreme compliance.<sup>2</sup> Other studies demonstrate that mentally ill defendants (who are not mentally retarded) have significant difficulties understanding the Miranda rights against self-incrimination and access to an attorney that they are asked to waive during police interrogation.<sup>3</sup> Thus, people with mental illness facing police interrogation are more likely to waive rights they do not understand and more likely to falsely confess.

(2) **COMPETENCY TO STAND TRIAL.** A defendant must be “competent” to stand trial under the United States Constitution. A competency hearing determines whether a defendant has “a rational as well as factual understanding of the proceedings” and whether the

defendant has “ability to consult with his lawyer with a reasonable degree of rational understanding.”<sup>4</sup> For example, a defendant with schizophrenia who has such severe delusions that he or she has lost contact with reality and cannot meaningfully consult with his or her lawyer should be declared incompetent to stand trial.

In reality, the competency test as applied by courts is a low bar and courts or juries routinely find that severely mentally ill defendants, including capital defendants, meet the basic test of competency.<sup>5</sup> In other words, just because a defendant is schizophrenic, or delusional, does not mean that he or she will be found incompetent to stand trial.

If a trial judge concludes that a capital defendant is incompetent to stand trial, the defendant will typically be transferred to a state mental hospital where the state doctors will try to improve the defendant’s mental state so that he or she can meet the competency standard. In *Sell v. United States*, 539 U.S. 166 (2003), the Supreme Court set clear rules about when a defendant who is not dangerous to himself or to others may be forcibly medicated against his or her will for the purpose of rendering the defendant competent to stand trial. Under *Sell*, forcible medication must be limited to those “rare” circumstances where the medication is: (1) medically appropriate; (2) unlikely to have side effects that undermine the fairness of the trial; and (3) necessary to significantly further important government trial-related interests, after taking into account other available alternatives. Under these rules, for example, the government should not be able to force a defendant to receive medication if counseling might be a possible alternative or if side effects from the medication would render the defendant unable to participate meaningfully in his or her defense at trial.

(3) INSANITY. Although there are important differences among the states, insanity is usually a defense to the crime that must be raised and proved by the defense. The most common insanity test, the “M’Naghten test,” asks whether the defendant was unable to understand what he or she was doing at the time of the crime due to some “defect of reason or disease of the mind” or, if he or she was aware of what she was doing, that he or she failed to understand that what he or she was doing was wrong.<sup>6</sup> The American Law Institute test is the second most commonly used test for insanity. The ALI test asks whether the defendant lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law as a result of a mental disease or defect.<sup>7</sup>

Under either test, juries frequently reject insanity defenses in capital cases despite strong evidence that the defendants were suffering from serious mental illnesses at the time of the crime. Part of the explanation is the fear created in the public was from the high profile acquittal of John Hinckley, Jr. on insanity grounds after he attempted to assassinate President Ronald Reagan.<sup>8</sup> In some states, the legislatures responded to the backlash against insanity defenses by creating a new verdict, “guilty but mentally ill.” Unfortunately, many jurors are unaware that a “guilty but mentally ill” verdict is virtually identical to a “guilty” verdict for defendants, and a

capital defendant who is found “guilty but mentally ill” can still face the death penalty and execution.<sup>9</sup>

(4) ABILITY TO FORM CRIMINAL INTENT. Most capital murder statutes require that the State prove beyond a reasonable doubt that the defendant specifically intended to kill the victim. However, many capital defendants who suffer from serious mental illness lacked the capacity to form a specific intent to kill at the time of their offense. In a troubling decision, *Clark v. Arizona*, 548 U.S. 735 (2006), the United States Supreme Court held that such defendants do not have a constitutional right to present evidence that they suffered from a serious mental illness to show that they did not have specific intent to kill. In dissent, Justice Kennedy declared: “In my submission the Court is incorrect in holding that Arizona may convict petitioner Eric Clark of first-degree murder for the intentional or knowing killing of a police officer when Clark was not permitted to introduce critical and reliable evidence showing he did not have that intent or knowledge.” *Id.* at 781.

(5) MITIGATION. Evidence of mental illness may be critically important for capital defendants at the penalty phase of their trials. At the penalty phase, the defendant is constitutionally entitled to present “mitigating evidence,” or any evidence that would serve as a basis for a life verdict. For example, the defendant can introduce evidence that he or she was severely abused as a child as mitigating evidence.

Although mental health evidence can be powerful mitigation, research has shown that jurors often misunderstand the relationship between mental illness and mitigating factors. All too often, jurors treat mental illness as a reason to vote for death, rather than a reason to vote for life.<sup>10</sup>

(6) ADDITIONAL ISSUES AT CAPITAL TRIALS. Mentally ill defendants face other unique challenges throughout the trial process. Because of their mental illnesses, they may distrust their lawyers and have difficulty participating in their defenses. Often, mentally ill capital defendants fire their lawyers and represent themselves or waive their appeals.<sup>11</sup> The same system of delusional beliefs that fundamentally prevents some severely mentally ill defendants from being able to present a rational defense may lead those defendants to fervently believe that they, and they alone, are capable of defending themselves at trial.

In addition, if they are not medicated, their demeanor and behavior at trial may frighten jurors and serve as another basis for death.<sup>12</sup> On the other hand, strong doses of anti-psychotic drugs have known sedating properties and may cause defendants to appear at trial as if they don’t care about the case or as zombies.<sup>13</sup> The law provides little to no protection for these problems faced by the mentally ill.

## II. Mental Illness and Executions

While the Supreme Court of the United States prohibited the execution of people with mental retardation in the case of *Atkins v. Virginia*, 536 U.S. 304 (2002), it has not yet ruled that it is unconstitutional to execute someone who suffered from a serious mental illness at the time of the crime. The Court has, however, stated that it is unconstitutional to execute someone who is incompetent at the time of his or her execution. The Supreme Court has visited the issue of mental incompetence in two important cases.

In *Ford v. Wainwright*, 477 U.S. 399 (1986), the Court held that it was unconstitutional to execute someone who was incompetent at the time of his execution. In a famous concurring opinion, Justice Lewis Powell laid out the test for prohibiting the execution of a person who has been incompetent. Justice Powell stated the “Eighth Amendment forbids the execution only of those who are unaware of the punishment they are about to suffer and why they are to suffer it.” *Id.* at 422.

In *Panetti v. Quarterman*, 127 S. Ct. 2842 (2007), the Supreme Court reaffirmed that a defendant can not be executed if he is incompetent at the time of his execution and clarified the *Ford* standard. Panetti’s lawyers argued that Panetti was not given an opportunity to show that he was not competent to be executed. The Texas judge presiding over the case had appointed experts to determine Panetti’s competence but did not give Panetti’s attorneys the opportunity to present defense experts. The Supreme Court agreed with Panetti and held that he did not receive his due process rights to a fair competency hearing. The Supreme Court also clarified what it means to be competent to be executed and held that a defendant must have a “rational understanding of the reason for the execution.” *Id.* at 2861. This was important in Panetti’s case because the lower court had concluded that Panetti needed only to know the “the fact of his impending execution and factual predicate for the execution.” *Id.* at 2845. The parties agreed that Panetti knew that he committed two murders and knew that Texas wanted to execute him. Panetti also believed, however, that the true reason why the Texas was seeking his execution was because he was preaching the Gospel. The Supreme Court explained that if a defendant is suffering from such a serious delusion that he does not understand the link between his crime and the execution, “the punishment can serve no proper purpose.” *Id.* at 2862.

The United States Supreme Court has not yet addressed whether a state may forcibly medicate a mentally-ill defendant in order to make them competent to be executed. There is no consensus on the issue in the lower courts. One federal court of appeals decision, *Singleton v. Norris*, 319 F.3d 1018 (8th Cir. 2003) (en banc), permitted the State of Arkansas to continue to forcibly medicate a death row inmate with an impending execution date on the ground that the medication was necessary to the safety of the defendant and other inmates. The inmate, Charles Singleton, suffered from paranoid schizophrenia and without the medication would not have been competent and could not have been executed. After the United States Supreme Court

refused to hear the appeal, Mr. Singleton was forcibly medicated and executed in 2004. The *Singleton* decision was heavily criticized because the court of appeals refused to consider the fact that the medication would permit his execution in the calculation when deciding whether the medication was “appropriate medical care.”<sup>14</sup>

State supreme court decisions in South Carolina and Louisiana, however, have recognized that the forcible medication of a mentally-ill defendant is unconstitutional.<sup>15</sup> The Louisiana Supreme Court eloquently explained this conclusion:

The punishment intended for Perry [the defendant] is severely degrading to human dignity. It will involve far more than the mere extinguishment of human life. Unlike other death row prisoners, Perry will be forced to yield to the state the control of his mind, thoughts and bodily functions, ingest or absorb powerful toxic chemicals, and risk or suffer harmful, possibly fatal, drug side effects. He will not be afforded a humane exit but will suffer unique indignities and degradation. In fact, he will be forced to linger for a protracted period, stripped of the vestiges of humanity and dignity usually reserved to death row inmates, with the growing awareness that the state is converting his own mind and body into a vehicle for his execution. In short, Perry will be treated as a thing, rather than a human being, and deliberately subjected to “something inhuman, barbarous” and analogous to torture.<sup>16</sup>

Maryland has solved the problem of forcibly medicating the condemned by statute. Under Maryland law, if a defendant is found to be incompetent to be executed, the trial court must commute the death sentence to a life without parole sentence.<sup>17</sup> This law eliminates the possibility of forcibly medicating for any purpose other than what is truly “appropriate medical care” for the inmate.

### **III. Executions of People with Mental Disorders**

Numerous capital inmates suffering from serious mental illnesses have been executed. Kelsey Patterson was executed by Texas in 2004. Patterson had a history of committing violent crimes but being found incompetent because he was diagnosed with paranoid schizophrenia. He voluntarily committed himself to a hospital after one crime. Despite his history and diagnosis, Patterson was found competent to stand trial by a jury after two murders in 1992. Patterson talked about conspiracies against him during his capital trial. Even though the Texas Board of Pardons and Paroles recommended that Patterson’s death sentence be commuted to life, the governor did not follow the recommendation.<sup>18</sup>

Pernell Ford was executed in Alabama in 2000. During the capital trial, Ford acted as his own counsel. While presenting his “defense”, Ford wanted the victims of the crime to be brought into the courtroom so that God could resurrect them.<sup>19</sup>

Viet Nam veteran Manny Babbitt was executed by California in 1999. Babbitt suffered from Post-Traumatic Stress Disorder as a result of his military service. The details of his crime indicate he had a flashback to war. He wrapped his victim in a blanket and tagged her as he would have if she were a fellow soldier on the battlefield.<sup>20</sup> Babbitt was awarded a Purple Heart for the injuries he suffered in Viet Nam. After he was executed, Manny Babbitt received a funeral with military honors.<sup>21</sup>

#### **IV. Hope On The Horizon?**

There is an increasing recognition that severe mental illness is a reason to spare people not from responsibility for their crimes but from the ultimate sanction of death. In 2008, a North Carolina court found that Guy LeGrande was incompetent to be executed.<sup>22</sup> LeGrande appears to be psychotic. During his trial where he represented himself, he wore a Superman shirt and told the jury to “[p]ull the damn switch and shake that groove thing.”<sup>23</sup>

Also in 2008, the Governor of Virginia found that Percy Walton was too mentally ill to be executed.<sup>24</sup> Walton thought that after he was executed that he would come back to life. In fact, he believed after his death sentence was carried out, he would go to Burger King to eat hamburgers. He also believed that his dead grandfather and the victims of his crimes would be resurrected.<sup>25</sup>

#### **V. Current Legislation**

In 2006, the American Bar Association passed a resolution calling for the exemption of those with serious mental illness from imposition and execution of the death penalty. At the time of this writing, Connecticut is the only state that prohibits the execution of someone who is mentally ill. Connecticut General Statute § 53a-46a (h)(3) (2009) exempts a capital defendant from execution if his “mental capacity was significantly impaired or [his] ability to conform [his] conduct to the requirements of law was significantly impaired but not so impaired in either case as to constitute a defense to prosecution[.]”

Other states legislatures, including Indiana, Kentucky, North Carolina and Tennessee, have proposed bills to exempt capital defendants with severe mental illness from facing the death penalty. This type of legislation is critical to protecting the severely mentally ill from execution. In addition to correcting the fundamental unfairness of capitally trying a person with a severe mental illness, an exemption would also significantly reduce years of expensive and time consuming litigation. If a defendant who is found to suffer from severe mental illness at the trial stage is exempt from the death penalty, the case will proceed as a non-capital one. Because of the necessary additional protections attached to capital cases, the costs of capital trials and appeals is significantly higher for all parties involved –the defense, the prosecution, and the courts. With death off the table for the seriously mentally ill, the costs of the trials and appeals

will be significantly reduced in those cases. Most importantly, we will create a criminal justice system that comes closer to ensuring that the punishment fits the crime and the defendant.

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<sup>1</sup> Mental Health America, *Death Penalty and People with Mental Illness* (available at [www.mentalhealthamerica.net/go/position-statement/54](http://www.mentalhealthamerica.net/go/position-statement/54)) (formerly known as National Mental Health Association).

<sup>2</sup> See W. Follette, D. Davis & R. Leo, *Mental Health Status and Vulnerability to Police Interrogation Tactics*, *Criminal Justice*, Fall 2007, at 42, 46-49.

<sup>3</sup> See, e.g., R. Rogers, K. Harrison, L. Hazelwood & K. Sewell, *Knowing and Intelligent: A Study of Miranda Warnings in Mentally Disordered Defendants*, 31 *LAW. & HUM. BEHAV.* 401, 414-16 (2007).

<sup>4</sup> *Drope v. Missouri*, 420 U.S. 162, 172 (1975).

<sup>5</sup> See generally, Michelle C. Goldbach, *Like Oil and Water: Medical and Legal Competency in Capital Appeal Waivers*, 1 *Cal. Crim. L. Rev.* 2 (2000).

<sup>6</sup> The Supreme Court's decision in *Clark v. Arizona*, 548 U.S. 735 (2006), discusses the M'Naghten test at length and reports that 17 states, along with the federal government, have adopted this test for insanity.

<sup>7</sup> Model Penal Code § 4.01(1); see also, *Clark*, *supra* note 6.

<sup>8</sup> See Henry J. Steadman et al., *BEFORE AND AFTER HINCKLEY: EVALUATING INSANITY DEFENSE REFORM* (1993).

<sup>9</sup> See, e.g., *State v. Wilson*, 413 S.E.2d 19, 26 (S.C. 1992).

<sup>10</sup> American Psychiatric Association, *Diminished Responsibility in Capital Sentencing*, 2004, <http://www.psych.org/Departments/EDU/Library/APAOfficialDocumentsandRelated/PositionStatements/200406.aspx> (“[M]any observers of capital sentencing proceedings, including participating psychiatrists, believe that juries tend to give too little weight to mitigating evidence of severe mental disorder, leading to inappropriate execution of offenders whose responsibility was significantly diminished by mental retardation or mental illness[.]”).

<sup>11</sup> Paula Shapiro, *Are We Executing Mentally Incompetent Inmates Because They Volunteer To Die?: A Look at Various States' Implementation of Standards of Competency to Waive Post-conviction Review*, 57 *Cath. U. L. Rev.* 567 (2008).

<sup>12</sup> See, e.g., Symposium, *Mental Illness and the Death Penalty in North Carolina: A Diagnostic Approach* (2006), [http://www.charlottelaw.org/downloads/community/MI\\_DPreport.pdf](http://www.charlottelaw.org/downloads/community/MI_DPreport.pdf).

<sup>13</sup> See, e.g., *Riggins v. Nevada*, 504 U.S. 127, 134-138 (1992).

<sup>14</sup> *Thompson v. Bell*, No. 1:04-CV-177, 2006 WL 1195892, at \*32-33 (E.D. Tenn. May 04, 2006).

<sup>15</sup> *State v. Perry*, 610 So. 2d 746 (La. 1992); *Singleton v. State*, 437 S.E.2d 53 (S.C. 1993).

<sup>16</sup> *Perry*, 610 So. 2d at 766.

<sup>17</sup> See MD. CODE ANN. CORR. SERVS. §§ 3-904(c), (h)(2) (West 2009).

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- <sup>18</sup> The International Justice Project, *Kelsey Patterson*, <http://www.internationaljusticeproject.org/illnessKPatterson.cfm> (last visited May 5, 2009).
- <sup>19</sup> Spencer Hunt, *Standard of sanity at issue*, Cincinatti Enquirer, April 22, 2001, *available at* [http://www.enquirer.com/editions/2001/04/22/loc\\_standard\\_of\\_sanity.html](http://www.enquirer.com/editions/2001/04/22/loc_standard_of_sanity.html).
- <sup>20</sup> Evelyn Nieves, *Hundreds Take Up the Cause of a Killer*, N.Y. Times, Apr. 26, 1999, *available at* <http://www.nytimes.com/1999/04/26/us/hundreds-take-up-the-cause-of-a-killer.html?pagewanted=1>.
- <sup>21</sup> Manuela Da Costa-Fernandes, *Manny Babbitt Laid to Rest*, SouthCoastToday.com, May 11, 1999, <http://archive.southcoasttoday.com/daily/05-99/05-11-99/a011o011.htm> (last visited May 5, 2009).
- <sup>22</sup> Titan Barksdale, *Murderer Ruled Unfit Mentally to Die for Crime*, News & Observer, July 2, 2008, *available at* <http://www.newsobserver.com/news/story/1127590.html>.
- <sup>23</sup> *See*, Mental Illness and the Death Penalty in North Carolina, *supra* note 12, at 22..
- <sup>24</sup> Official Site of the Governor of Virginia, *Statement of Governor Kaine on the Scheduled Execution of Percy Levar Walton*, June 9, 2008, <http://www.governor.virginia.gov/MediaRelations/NewsReleases/viewRelease.cfm?id=680>, (last visited May 5, 2009).
- <sup>25</sup> Candace Rondeaux, *Inmate's Execution Still Set for Tonight*, Washington Post, June 8, 2006, *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/07/AR2006060702201.html>.