

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.¹

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.² 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.³ 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.”⁴ 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.⁵ 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
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capital defendant who is found “guilty but mentally ill” can still face the death penalty and execution.⁹

(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

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.

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.”¹⁴

State supreme court decisions in South Carolina and Louisiana, however, have recognized that the forcible medication of

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.²⁰ 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.²¹

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.²² 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.”²³

Also in 2008, the Governor of Virginia found that Percy Walton was too mentally ill to be executed.

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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.

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

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

³ See, e.g.,

¹⁸ The International Justice Project, *Kelsey Patterson*,
<http://www.internationaljusticeproject.org/illnessKPatterson.cfm> (last visited May 5, 2009).

¹⁹ 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.

²⁰ 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>.

²¹ 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).

²² 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>.

²³ *See*, Mental Illness and the Death Penalty in North Carolina, *supra* note 12, at 22..

²⁴ 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).

²⁵ 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>.