Death Row Delusions: When Is a Prisoner Competent to Be Executed?

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This column examines a recent U.S. Supreme Court decision in *Panetti v. Quarterman*, which embraced a broader view of what makes death row prisoners incompetent to be executed. Although the defendant understood that he was to be executed and the state's purported reason for seeking his death—two criteria suggested by the Court's 1986 decision in *Ford v. Wainwright*—he suffered from a fixed delusion about the actual reason for his death. The Court indicated that competent prisoners must have a "rational understanding" of the reason that a death penalty is being imposed but declined to define a clear standard. (*Psychiatric Services* 58:1258–1260, 2007)

When the U.S. Supreme Court decided in 1986 that executing a person who is "insane" violates the Eighth Amendment's proscription of cruel and unusual punishment, the justices did not define the standard by which to determine whether a death row prisoner could be executed (1). Now more than 20 years later, faced with the case of yet another condemned prisoner suffering from psychosis, the Court has come back to the question—and, despite some progress, again displayed its reticence about providing a clear answer (2). This column examines a June 2007 U.S. Supreme Court decision in the case of *Panetti v. Quarterman* and its implications for prisoners on death row who are mentally ill.

The Court's second chance at defining a standard of competence for execution came when the justices agreed to hear the appeal of Scott Panetti, who had been convicted in Texas for a 1992 double murder. Panetti, who had a history of multiple hospitalizations for psychosis, arose before dawn, dressed in combat fatigues, broke into his in-laws' house, and, in front of his estranged wife and daughter, shot and killed his wife's parents. After holding his wife and child hostage for several hours, he surrendered to the police. Three years later, despite his unmedicated delusions and hallucinations, Panetti was permitted to dispense with an attorney and represent himself at trial. An attorney who observed Panetti's bizarre performance characterized it as "a mockery of self-representation"; the jury brought back a verdict of guilty and ultimately sentenced him to death.

Just two months later, a state appellate court found Panetti incompetent to waive the appointment of counsel for the purpose of pursuing an appeal of his conviction and sentence. Because Panetti now had legal representation, a series of appeals ensued. As is typical in death penalty cases, the legal path was tortuous, ping-ponging between state and federal tribunals. When objections to procedures at Panetti's trial were rebuffed by the Texas courts, his attorney sought review by the federal district court. But his many challenges to the constitutionality of the criminal proceedings were rejected, a conclusion affirmed by the U.S. Fifth Circuit Court of Appeals. At that point, the U.S. Supreme Court declined to hear the case.

With Panetti seemingly at the end of the legal road, a date of February 5, 2004, was set for his execution. Two months before the sentence was to be carried out, his lawyer alleged for the first time that Panetti was incompetent to be executed. Although the state court denied this motion without a hearing, the federal district court stayed his execution and indicated that Texas should take a closer look at Panetti's mental state. The state trial court appointed two mental health experts—a psychiatrist and a clinical psychologist—to evaluate him. When they concluded that he was competent to be executed under Texas law, the court dismissed his claim, again without holding a hearing. Panetti's attorney then went back to the federal district court to object to how Texas had dealt with his assertion of incompetence (3).

Siding with Panetti on the question of whether he was entitled to an adversarial proceeding regarding his claim, the federal court authorized funds for his attorney to hire experts and held a two-day evidentiary hearing. All the experts who testified, whether for the defense or prosecution, agreed that Panetti was mentally ill, although the prosecution experts maintained that he exaggerated his symptoms. The real question, though, was whether he was sufficiently impaired to be considered incompetent for execution. And to understand how the court dealt with that issue, we need to return to the U.S. Supreme Court's 1986 decision in *Ford v. Wainwright* that first gave a constitutional footing to the requirement that a prisoner be competent to be executed (1).

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Competence considerations and standards

Writing in *Ford* for the four-justice plurality that found executing incompetent persons unconstitutional, Justice Marshall did not directly address the standard to be applied when competence was in question. The closest he came was in noting "[W]e may seriously question the retributive value of executing a person who has no comprehension of why he has been singled out and stripped of his fundamental right to life." In his concurrence, however, Justice Powell defined the standard that he thought should be invoked: "If the defendant perceives the connection between his crime and his punishment, the retributive goal of the criminal law is satisfied. And only if the defendant is aware that his death is approaching can he prepare himself for his passing. Accordingly, I would hold that 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."

Perhaps for want of other guidance, most U.S. Circuit Courts of Appeals have embraced Justice Powell's formulation, and the Fifth Circuit, which includes Texas, is no exception. However, the Fifth Circuit's interpretation of the Powell standard has been quite narrow and not directly linked to his retributive rationale. So long as a prisoner knows that he or she is facing execution and that the stated reason for that execution is the crime of which the person has been convicted, under Fifth Circuit law the prisoner is competent to be put to death (4). However, Panetti's situation demonstrates the limits of that approach.

As described by his mental health experts, Panetti understood that he was to be executed and the state's purported reason for seeking his death. However, he suffered from a fixed delusion that the actual reason for his death was the state's desire to prevent him from preaching the Gospel. One expert portrayed Panetti's characterization of the situation as "part of the spiritual warfare . . . between the demons and the forces of the darkness and God and the angels and the forces of light." Thus, although he understood why the state claimed it was acting, his grasp of the situation was sufficiently distorted by his delusion that he failed to appreciate that his crime was actually the basis for his execution.

An analogous situation can arise in clinical settings. Patients with schizophrenia or bipolar disorder may understand that their physicians believe they have a mental disorder. However, some patients reject this conclusion, often on a delusional basis—despite an extensive history that would support the diagnosis—and decline to accept treatment. Such patients would be said to have an understanding of the information they have been given but to lack appreciation of its implications for their situation (5). Courts in almost every jurisdiction would consider such persons incompetent to make treatment choices (6).

Under the Fifth Circuit's approach to competence to be executed, however, as long as a death row prisoner understands why the state says that it is acting, the prisoner's beliefs—however delusional—about the reason that the state is seeking death are irrelevant. Justice Powell's concern that there is no retributive value in putting to death a person who does not recognize why the state is depriving him or her of life is given no weight in the Fifth Circuit's calculus. Compelled to apply this approach, the federal district court concluded, "Because the Court finds that Panetti knows he committed two murders, he knows he is to be executed, and he knows the reason the State has given for his execution is this commission of those murders, he is competent to be executed." In a brief opinion that reiterated its previous approach, the Fifth Circuit affirmed the district court's decision.

The Supreme Court's decision

Thus when the U.S. Supreme Court granted certiorari, the stage was set for it to reconsider what capacities a condemned prisoner must exhibit to be competent for execution. But first there was a procedural argument offered by the State of Texas that had to be overcome. In 1996 Congress passed the Antiterrorism and Effective Death Penalty Act (AEDPA), one purpose of which was to limit access to the federal courts of state prisoners who have been sentenced to death. Under the law, persons convicted of a capital offense have one opportunity to raise claims that their federal constitutional rights were violated. This is typically accomplished by filing a habeas corpus petition with the federal courts. However, "second or successive" federal habeas applications are precluded, except in a small number of circumstances (for example, previously undiscoverable evidence has come to light that would clearly exculpate the prisoner). Texas argued that since Panetti's claim regarding his incompetence to be executed was made in a second petition to the federal courts—well after his initial challenges to the legitimacy of his trial had been dismissed—the Supreme Court lacked jurisdiction even to hear his case.

Justice Kennedy's majority opinion rejected this argument, although a four-justice minority, led by Justice Thomas, adopted it in its dissent. Notwithstanding the plain language of the statute, Kennedy argued that it made little sense to apply the "second or successive" rule to claims of incompetence to be executed. Because many years elapse between a prisoner's initial appeal of a death sentence and the date of execution, prisoners who were competent at the time of their first habeas petition could become incompetent in the interim. To preclude such a person from filing a claim of incompetence would be unfair, and to encourage the filing of incompetence claims while the prisoner was still competent—so as not to foreclose raising the issue later—would not serve the interests of judicial economy and finality, which the AEDPA was meant to promote.

With their right to hear the case established, the majority moved to Panetti's substantive claims. First, they determined that because the Texas court had failed to grant him a hearing—which was required by *Ford v. Wainwright*—its decision that he was competent to be executed was due no particular deference. Hence, the justices would consider the merits of Panetti's claim directly

themselves. As for the standard to be applied, the majority found that "the approach taken by the Court of Appeals is inconsistent with *Ford*." Whether one applies the implicit standard of the plurality in *Ford* (comprehension of why he has been sentenced to death) or the standard suggested in Justice Powell's concurrence (awareness of the punishment and why he is to suffer it), the Court concluded, "A prisoner's awareness of the State's rationale for an execution is not the same as a rational understanding of it." And the Court found that a rational understanding is required. The lower courts' failure to consider the impact of Panetti's delusions on his grasp of the situation therefore constituted reversible error. Thus the case was remanded to the federal district court for a hearing that will take Panetti's delusions into account in determining whether he is competent to be executed.

Despite the majority's indication that a prisoner must have a rational understanding—roughly equivalent to what clinicians know as "appreciation"—of the reason the death penalty is being imposed, the court somewhat mysteriously declined to define a specific standard to be followed. Justice Kennedy claimed that the factual record in the case was insufficiently developed, but the dissent properly chided him about this on the grounds that whatever the facts in Panetti's case, they were unlikely to affect a determination of the correct standard, which would turn on more general considerations. It may be that Kennedy's preference for incrementalism was the operative factor, but it is also possible that his five-justice majority would not have held together had they needed to agree on a standard.

Even without inscribing a specific standard, the Court gave enough hints of its inclinations that lower courts that have not already done so will likely move toward an approach that embraces rational understanding. This echoes the joint recommendation of the American Psychiatric Association, American Psychological Association, National Alliance on Mental Illness, and American Bar Association that a prisoner should be considered incompetent to be executed (and have the sentence commuted to life imprisonment) if a mental disorder or disability "significantly impairs his or her capacity to understand the nature and purpose of the punishment, or to appreciate the reason for its imposition in the prisoner's own case (7)." That five justices recognized the impact that delusions can have on persons' assessment of their situation is reassuring with regard to the Court's own appreciation of the impact of mental illness. But there seems little question that in the future the issue of when a prisoner is incompetent to be executed will again make its way to the Supreme Court for a definitive ruling.

References

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